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Nos. 06-1457 & 06-1462

IN THE

Supreme Court of the United States

MORGAN STANLEY CAPITAL GROUP INC.,
Petitioner,

AND

CALPINE ENERGY SERVICES, L.P.,
AMERICAN ELECTRIC POWER SERVICE CORP.
AND
ALLEGHENY ENERGY SUPPLY CO., LLC,
Petitioners

v.

PUBLIC UTILITY DISTRICT NO. 1
OF SNOHOMISH COUNTY WASHINGTON, *et al.*,
AND
FEDERAL ENERGY REGULATORY COMMISSION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX VOLUME ONE

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Petition for Writ of Certiorari Filed May 3, 2007
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APPENDIX A

CHRONOLOGICAL LIST OF DOCKET ENTRIES

I. FEDERAL ENERGY REGULATORY COMMISSION
Docket No. EL02-56

Date Filed	Docket Text
10/23/2000	Exhibit MSC-169 in Nevada Power Company and Sierra Pacific Power Company's proceeding under EL02-28 *et al.*:electronic mail memo dated 10/11/01 concerning the Snohomish PUD margin
2/10/2002	Exhibit SNO-58 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared rebuttal testimony of Dr Timothy D Mount on behalf of PUD 1 of Snohomish County, Washington etc.
2/11/2002	Complaint of Snohomish County Public Utility District 1 against Morgan Stanley Capital Group, Inc & request for privileged treatment & proposed protective order under EL02-56.

2/11/2002	Complaint of Snohomish County Public Utility District 1 against Morgan Stanley Capital Group, Inc & request for privileged treatment & proposed protective order under EL02-56. NON-PUBLIC.
2/13/2002	Notice of Public Utility District 1 of Snohomish County, WA 2/11/02 filing of a complaint, requesting that FERC mitigate unjust & unreasonable terms & conditions contained in long-term power supply contract against Morgan Stanley Capital Group.
2/19/2002	Motion/Notice of Intervention of Portland General Electric Company under EL02-56.
2/22/2002	Motion to Intervene of Duke Energy North America, LLC and Duke Energy Trading & Marketing, LLC under EL02-56.
2/22/2002	Motion of Idacorp Energy LP to intervene re Public Utility District 1 of Snohomish County, Washington v Morgan Stanley Capital Group, Inc under EL02-56.
3/4/2002	Motion of Intervention and Protest of Electric Power Supply Association under EL02-56.
3/4/2002	Motion/Notice of Intervention of Sacramento Municipal Utility District

	under EL02-56.
3/4/2002	Motion to Intervene of the American Public Power Association under EL02-56-000.
3/4/2002	Motion to intervene of Mirant Americas Energy Marketing, LP re Public Utility District *No.*1 of Snohomish County, WA v. Morgan Stanley Capital Group, Inc under EL02-56.
3/4/2002	Motion to intervene of Nevada Power Co & Sierra Pacific Power Co regarding Public Utility District *No.*1 of Snohomish County, WA v. Morgan Stanley Captial Group, Inc under EL02-56.
3/4/2002	Motion to dismiss of Morgan Stanley Capital Group re the complaint filed by Public Utility District 1 of Snohomish County, Washington under EL02-56.
3/4/2002	Answer of Morgan Stanley Capital Group, Inc to complaint of Public Utitlity District of Snohomish County, Washington under EL02-56.
3/4/2002	Answer of Morgan Stanley Capital Group, Inc to the complaint filed by Public Utitlity District *No.*1 of Snohomish County, Washington under EL02-56. Non-Public.

3/5/2002	Supplement Errata to Answer of Morgan Stanley Capital Group Inc. under EL02-56.
3/6/2002	Motion to Intervene Out of Time of California Electricity Oversight Board under EL02-56.
3/11/2002	Response to Wendell Martin's letter dated 03/06/02, concerning the long-term contracts for electricity in the California area etc under EL02-26 *et al.*
3/15/2002	Exhibit SNO-85 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Restructured Electricity Markets Report.
3/19/2002	Answer of Public Utility District 1 of Snohomish County, Washington to motion to dismiss answer of Morgan Stanley Capital Group Inc under EL02-56.
3/19/2002	Answer of Public Utility District 1 of Snohomish County, Washington to motion to dismiss answer of Morgan Stanley Capital Group Inc under EL02-56. Non Public.
3/21/2002	Motion to intervene out-of-time of the Industrial Customers of Northwest Utilities re Public Utility District 1 of Snohomish County, WA v Morgan

	Stanley Capital Group, Inc under EL02-56.
4/1/2002	Motion for late intervention of Fluke Corp re Public Utility District 1 of Snohomish County, Washington v Morgan Stanley Capital Group, Inc under EL02-56.
4/9/2002	Motion for leave to reply of Morgan Stanley Capital Group, Inc & answer opposing the Public Utility District 1 of Snohomish County, Washington answer under EL02-56.
4/11/2002	Concurrence in part & dissenting in part by Commissioner WL Massey re 04/11/02 Order on hearing procedures to develop a record upon which the Commission will decide to modify the terms of a series of long term contracts etc, EL02-26 *et al.*
4/11/2002	Concurrence by Commissioner Nora Mead Brownell re Commission's 04/11/02 Order concerning Nevada Power Company *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
4/16/2002	Description: Errata notice to the 04/11/02 Order Setting Complaints for Hearing, Establishing Hearing Procedures, and Consolidating Proceedings re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26

et al.

4/17/2002	Order of Chief Judge Curtis L Wagner, Jr designating Carmen A Cintron as Presiding Administrative Law Judge re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
4/18/2002	Order scheduling prehearing conference for 05/01/02 re Nevada Power Company & Sierra Pacific Power Company v Duke Energy Trading & Marketing, LLC, Enron Power Marketing, Inc *et al.* under EL02-26 *et al.*
4/23/2002	Complaint of Public Utitlity District *No.*1 of Snohomish County, Washington against Morgan Stanley Capital Group Inc under EL02-56
4/23/2002	Motion of Public Utitlity District *No.*1 of Snohomish County, Washington to compel data responses by Morgan Stanley Capital Group Inc & request for shortened response period re Nevada Power Co *et al.* v Duke Energy Trading *et al.* under EL02-25 *et al.*
4/23/2002	Answer of Public Utitlity District *No.*1 of Snohomish County, Washington to motion for leave to reply and answer of Morgan Stanley Capital Group Inc

6/10/2002	Order scheduling settlement conference for 6/11/02 re Nevada Power Company *et al.* ve Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/10/2002	Notice of withdrawal with prejudice of Nevada Power Company's and Sierra Pacific Power Company's complaint against Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/11/2002	Order scheduling oral argument for 6/26/02 re Navada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/11/2002	Order scheduling oral argument for 6/26/02 regarding Nevada Power Company, Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/11/2002	Motion of Public Utility District 1 of Snohomish County, Washington to compel data responses of Morgan Stanley Capital Group in re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/12/2002	Joint motion of City of Tacoma, Washington, & Indicated Respondents to toll the time for filing motion to compel re Nevada Power Company *et al.* v Duke Energy Trading and

	re Nevada Power Co & Sierra Pacific Power Co *et al.* under EL02-26 *et al.*
4/29/2002	Answer of Morgan Stanley Capital Group Inc. under EL02-56 *ET AL.*
4/29/2002	Motion to Intervene Out of Time of City of Tacoma, WA under EL02-26, *et al.*
4/30/2002	Errata notice to the 4/16/02 order re Nevada Power Co *et al.* under EL02-26 *et al.*
5/1/2002	Motion for leave to intervene out of time of Sempra Energy Trading Corporation re Nevada Power Company & Sierra Pacific Power Company v Duke Energy Trading and Marketing, Enron Power Marketing Inc *et al.* under EL02-26.
5/1/2002	Transcript of May 1, 2002 prehearing conference in Washington, DC re Nevada Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Volume 1, Pp 1-57.
5/2/2002	Order scheduling addtional prehearing conference for 5/29/02 re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/2/2002	Order establishing procedural schedule re Nevada Power Company

	and Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/2/2002	Order confirming rulings re Nevada Power Company and Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/2/2002	Motion for leave to intervene out-of-time of Pacificorp re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
5/3/2002	Notice of Appearance on behalf of Allegheny Energy Supply Company LLC re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
5/3/2002	Motion of Indicated Parties-Nevada Power Co *et al.* requesting designation of settlement judge and scheduling of a settlement conference re Duke Energy Trading & Marketing, LLC *et al.* under ER02-26 *et al.*
5/7/2002	Order of the Chief Judge designating Settlement Judge and scheduling settlement conference for 05/10/02 re Nevada Power Company & Sierra Pacific Power Company v Duke Energy Trading and Marketing LLC

	et al. under EL02-26 *et al.*
5/8/2002	Motion to Intervene Out of Time of Office of Senator Maria Cantwell under EL02-26.
5/13/2002	Further order by Settlelment Judge on closing settlement conference re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC, Enron Power Marketing, Inc *et al.* under EL02-26 *et al.*
5/13/2002	Order by Settlement Judge Herbert Grossman closing settlement conference re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
5/13/2002	Joint mediation report of Mirant Americas Energy Marketing, LP and Southern California Water Company re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/13/2002	Reliant Energy Services, Inc's status report on mediation efforts re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/13/2002	Joint report by Nevada Power Company and Morgan Stanley Capital Group, Inc concerning status of mediation re Duke Energy Trading

	and Marketing, LLC *et al.* under EL02-26 *et al.*
5/13/2002	Joint report by Public Utility District 1 of Snohomish County, Washington and Morgan Stanley Capital Group, Inc concerning status of mediation re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/13/2002	Joint report by Public Utility District 1 of Snohomish County, Washington and Morgan Stanley Capital Group, Inc concerning status of mediation re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/15/2002	Order adopting proposed protective order re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC et at under EL02-26 *et al.*
5/15/2002	Order adopting proposed protective order re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
5/16/2002	Order scheduling settlement conference re Nevada Power Co *et al.* v Duke Energy Trading & Marketing , LLC *et al.* under EL02-26 *et al.*
5/16/2002	Order scheduling settlement conference for 5/21/02 re Nevada

	Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
5/20/2002	Order granting City of Tacoma, WA, Sempra Energy Trading Corp, and PacifiCorp's motions for leave to intervene out of time re Nevada Power Co *et al.* under EL02-26 *et al.*
5/20/2002	Order granting motions for leave to intervene out of time re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/22/2002	Order scheduling settlement conference on 5/29/02 re Nevada Power Co *et al.* v Duke Energy Trading & Marketing *et al.* under EL02-26*et al.*
5/22/2002	Order scheduling Settlement Conference on May 29, 2002 re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC under EL02-26.
5/22/2002	Order scheduling settlement conference for 5/29/02 regarding Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26.
5/28/2002	Joint motion of Public Utility District 1 of Snohomish County, WA *et al.* to

	adopt protective order and request for expedited consideraton re Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/28/2002	Joint motion of American Electric Power Service Corp, *et al.* to adopt protective order re Nevada Power Company and Sierra Pacfic Power Company under EL02-26 *et al.*
5/29/2002	Transcript of 5/29/02 prehearing conference held in Washington, DC re Nevada Power Co & Sierra Pacific Co v Duke Energy Trading and Marketing, LLC *et al.* under EL00-26 *et al.* Volume 2, Pages 58-130.
5/30/2002	Protective Order re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/30/2002	Protective Order re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/30/2002	Protective order regarding Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
5/30/2002	Grouping Position of the Public Utilities Commission of Nevada regarding Nevada Power Company

	and Sierra Pacific Power Co v Duke Energy Trading and Marketing under EL02-26 *et al.*
5/30/2002	Response of the Office of the Attorney General for the State of Nevada, Bureau of Consumer Protection to Order Requiring Designation of Groups re Nevada Power Co and Sierra Pacific Power Co etc under EL02-26 *et al.*
5/30/2002	Proposed groupings and designation of lead counsel for Respondents regarding Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
5/31/2002	Application of the City of Tacoma, Washington for the Issuance of Supoenas Duces Tecum to attend depositions and documentary evidence re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing, Inc under EL02-26 *et al.*
5/31/2002	Joint designation of groupings and Lead Counsel for the Complainants re Nevada Power Co and Sierra Pacific Gas Power Co V Duke Energy Trading and Marketing LLC, Enron Power Marketing Inc *et al.* under EL02-26 *et al.*

6/3/2002	The City of Tacoma, Washington's *et al.* joint designation of grouping and designation of lead counsel regarding Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/3/2002	Commission Trial Staff's motion for order limiting discovery and for expedited consideration regarding Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/4/2002	Order scheduling oral argument for June 6, 2002 regarding Nevada Power Co &Sierra Pacific Power Co v. Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/4/2002	Order granting application of the City of Tacoma, Washington for the issuance of Subpoenas Duces Tecum under EL02-26 *et al.*
6/4/2002	Order granting Senator Maria Cantwell's 05/8/02 motion to intervene out of time re Nevada Power Co and Sierra Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
6/4/2002	Order of the Chief Judge designating Settlement Judge and scheduling

	Settlement Conference re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
6/4/2002	Order granting application of the City of Tacoma , Washington for the issuance of Subpoenas Duces Tecum under EL02-26 *et al.*
6/4/2002	Order granting application of the City of Tacoma, Washington for the issuance of subpoenas duces tecum re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/4/2002	Order granting motion to intervene out of time re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/4/2002	Order granting application of the City of Tacoma, Washington for the issuance of subpoenas duces tecum regarding Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/4/2002	Order scheduling oral argument for 6/6/02 regarding Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and

	Marketing, LLC under EL02-26 *et al.*
6/4/2002	Enron Power Marketin, Inc submits data requests to Sierra Pacific Power Co's first set of data requests dated 6/3/02 unde rEL02-26 *et al.*
6/4/2002	Responses & notices of objection of Enron Power Marketing, Inc to Sierra Pacific Company's first set of data requests re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/5/2002	Order adopting restricted service list re Nevada Power Co and Sierra Pacific Power Co *et al.* v Duke Energy and Marketing LLC *et al.* under EL02-26 *et al.*
6/5/2002	Order adopting restricted service list re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/5/2002	Answer of Mirant Americas Energy Marketing, LP *et al.* in support of Commission Trial Staff's motion for order and motion for order futher limiting discovery re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/5/2002	Notice of objection and request for order limiting discovery of Enron Power Marketing, Inc re Nevada

	Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/6/2002	Order approving groups for procedural purposes re Nevada Power Co and Sierra Pacific Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
6/6/2002	Order rescheduling oral argument for 6/6/02 re Nevada Power Co and Sierra Pacific Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
6/6/2002	Order approving Groups re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/6/2002	Order rescheduling oral argument re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/6/2002	Answer of the City of Tacoma, Washington to Commission Trial Staff's motion for order limiting discovery and for expedited consideration re Nevada Power Company *et al.* v Duke Energy Trading & Marketing, LLC under EL02-26 *et al.*

6/6/2002	Answer of Southern California Water Company to Indicated Respondents' motion for order further limiting discovery re Nevada Power Company *et al.* v Duke Energy Trading & Marketing, LLC under EL02-26 *et al.*
6/6/2002	Order rescheduling oral argument for 6/6/02 re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/6/2002	Transcript of 6/6/02 Oral Argument held in Washington, DC re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Volume 3, pages 131-188.
6/7/2002	Order confirming rulings re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/7/2002	Order scheduling oral argument to be heard on 06/12/02 re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/7/2002	The City of Tacoma, Washington notice of intent to depose Daniel L Poffenberger re Nevada Power

	Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL00-26 *et al.*
6/7/2002	Affidavit of Phillip Movish on behalf of the City of Tacoma, WA re the Commission Trial Staff's objections to the City of Tacoma's request for production of documents re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.*, EL02-26 *et al.*
6/7/2002	Morgan Stanley Capital Groups Inc submits its motion to disqualify counsel for Nevada Power Co under EL02-26.
6/7/2002	Motion of Morgan Stanley Capital Group Inc to disqualify Counsel for Nevada Power Company re Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*NON-PUBLIC.
6/10/2002	Order scheduling settlement conference for 6/11/02 re Nevada Power Co and Sierra Pacific Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
6/10/2002	Objection to Motion to Compel Production of NPC/SPPC, LLP under EL02-26 *ET AL.*

Marketing, LLC *et al.* under EL02-26 *et al.*

6/12/2002 Motion to intervene out of time of Public Utility District 1 of Chelan County, Washington re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/12/2002 Transcript of 06/12/02, oral argument held in Washington, DC re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.* Pages 189-204. Volume 4.

6/13/2002 Order granting City of Tacoma, WA & Respondents extension of time to file motion to compel re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

6/13/2002 Motion of Morgan Stanley Capital Group Inc. to Expedite Consideration of Its Motion to Disqualify Counsel for Nevada Power Company under EL02-26 *ET AL.*

6/13/2002 Order scheduling oral argument for 6/20/02 regarding Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26

et al.

6/13/2002 Order confirming rulings re Nevada Power Co *et al.* ve Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/13/2002 Order granting extension of time to 6/19/02 to file motion to compel regarding Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/13/2002 Answer of American Electric Power Service Corporation in support of motion for expidited consideration regarding Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*

6/14/2002 Answer and Objection of Morgan Stanley Capital Group Inc. to the Motion To Compel Production of Discovery of the Public Utility District No. 1 of Snohomish County, Washington under EL02-26 *ET AL.*

6/14/2002 Procedural Motion of El Paso Merchant Energy, L.P. under EL02-26 *ET AL.*

6/18/2002 Opposition to Motion for Expedited Consideration of Nevada Power Company and Sierra Pacific Power Company under EL02-26 *ET AL.*

6/18/2002	Request for expedited consideration and motion to bifurcate complaint of Public Utility District 1 of Snohomish County, Washington against Morgan Stanley Capital Group Inc and consolidate it with new complaint etc under EL02-26 *et al.*
6/19/2002	Motion of the City of Tacoma, Washington to compel data responses of indicated respondents regarding Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/19/2002	Southern California Water Co's motion to compel Mirant Americas Energy Marketing's responses to Southern California Water Co's first & second sets of data requests & motion for expedited consideration etc under EL02-26 *et al.*
6/20/2002	Second Motion of Public Utility District 1 of Snohomish County, Washington to compel data responses for Morgan Stanley Capital Group, Inc etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-2 *et al.*
6/20/2002	Notice of the City of Tacoma, Washington regarding its disposition of Seabron Adamson and Barrett Reasoner re Public Utility District Snohomish County, Washington v

	Morgan Stanley Capital Group, Inc under EL02-26 *et al.*
6/20/2002	Application of the City of Tacoma, Washington for the issuance of subpoenas Duces Tecum to attend depositions & for documentary evidence re NevadaPower Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing Co *et al.* EL02-26 *et al.*
6/20/2002	Transcript of June 20, 2002 oral argument in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*Volume 5, Pp 205-220, 222-272.
6/21/2002	Order scheduling oral argument re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/21/2002	Order on motion to adopt procuedures for motions to compel re Nevada Power Co *et al.* v Duke Energy Trading Marketing, LLC *et al.* under EL02-26 *et al.*
6/21/2002	Order denying motion to expedite consideration of motion to disqualify counsel re NevadaPower Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26*et al.*

6/21/2002	Order confirming rulings re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/21/2002	Answer of Indicated Respondents (Calpine Energy Services, L.P., *ET AL.*) to Motion of the City of Tacoma, Washington to Compel Data Responses of Indicated Respondents under EL02-26 *ET AL.*
6/21/2002	Order denying Morgan Stanley Capitla Group, Inc 6/13/02 motion to expedite consideration of motion to disqualify councel re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/21/2002	Order scheduling oral argument re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/21/2002	Order confirming rulings re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/22/2002	Direct Testimony of Robert Eustice on behalf of Public Utility District *No.*1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC

et al. under EL02-26 *et al.*

6/24/2002 Order granting application of the City of Tacoma, Washington for the issuance of Subpoenas Duces Tecum re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*

6/24/2002 Answer of Nevada Power Company and Sierra Pacific Power Company in Opposition to Motion of Morgan Stanley Capital Group Inc.'s To Disqualify Counsel under EL02-26.

6/24/2002 Order granting application of the City of Tacoma, Washington for the issuance of Subpoenas Duces Tecum re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

6/25/2002 Direct Testimony of Gary L Jefferis on behalf of Public Utility District *No.*1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/25/2002 Direct Testimony of Linda D Harris on behalf of Public Utility District *No.*1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26

et al.

6/26/2002	Transcript of June 26, 2002 oral argument in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*Volume 6, Pp 273-331.
6/26/2002	Direct Testimony of Drew C Coleman on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/27/2002	Proof of service of process of subpoenas Duces Tecum to attend depositions and for documentary evidence re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Notice of the City of Tacoma, Washington, regarding the adoption of the testimony of Robert McCullough re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Notice of the City of Tacoma, Washington, regarding its deposition of John Forney scheduled for 7/18/02 re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26

et al.

6/28/2002 Allegheny Energy Supply Co, LLC forwards prepared direct testimony of Daniel L Gordon *et al.* re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/28/2002 Public Utility District 1 of Snohomish County, Washington forwards direct testimony and exhibits re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/28/2002 Prepared direct testimony of Joel A Dickson on behalf of Southern Clifornia Water Company re Nevada Power Company *et al.* v Duke Energy Trading and Marketing *et al.* under EL02-26 *et al.*

6/28/2002 Summary of direct prepared testimony of McClellan Harris III on behalf of Southern California Water Company re Nevada Power Company *et al.* v Duke Energy Trading and Marketing *et al.* under EL02-26 *et al.*

6/28/2002 Prepared direct testimony of Gordon TC Taylor on behalf of Southern California Water Company re Nevada Power Company *et al.* v Duke Energy Trading and Marketing *et al.* under EL02-26 *et al.*

6/28/2002	Prepared direct testimony of Thomas Boland submitted on behalf of El Paso Merchant Energy LP *et al.* re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Dennis Price submitted on behalf of El Paso Merchant Energy LP re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Joseph Kalt on behalf of El Paso Merchant Energy LP & Calpine Energy Services, LP re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Direct testimony of James L Herrling on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Direct testimony of William J Kemp on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/28/2002	Direct testimony of Drew C Coleman on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Direct testimony of Jack Heath on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Direct testimony of Gary L Jefferis on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Direct testimony of Linda D Harris on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Direct testimony of Robert Eustice on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Direct testimony of Kerri Lonergan on

behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/28/2002 The Public Utility District 1 of Snohomish County, Washington forwards direct testimony of John White and Exhibits regarding Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*

6/28/2002 The Public Utility District 1 of Snohomish County, Washington forwards direct testimony of John White and Exhibits regarding Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*PROTECTED MATERIALS.

6/28/2002 Mirant Americas Energy Marketing LP *et al.* fowards prepared direct testimony of Joseph Perillo (Exhibit MAEM-1) *et al.* regarding Nevada Power Company v Duke Energy Trading & Marketing, LLC under EL02-26 *et al.*

6/28/2002 Summary of prepared direct testimony of Joseph Perillp on behalf of Mirant Americas Energy Marketing, LP *et al.* re Nevada Power Company *et al.* v Duke Energy

	Trading and Marketing LLC *et al.* under EL02-26 *et al.*
6/28/2002	Summary of prepared direct testimony of Robert Schaefer on behalf of Mirant Americas Energy Marketing, LP regarding Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/28/2002	Direct testimony of J Stephen Henderson on behalf of Mirant Americas Energy Marketing, LP regarding Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/28/2002	Mirant Americas Energy Marketing LP *et al.* forwards prepared direct testimony of Joseph Perillo (Exhibit MAEM-1) *et al.* regarding Nevada Power Company v Duke Energy Trading & Marketing, LLC under EL02-26.PROTECTED MATERIALS.
6/28/2002	Summary of prepared direct testimony of Joseph Perillo on behalf of Mirant Americas Energy Marketing, LP re Nevada Power Company *et al.* v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*Protected Material.
6/28/2002	Direct testimony of Daniel L Gordon on behalf of Allegheny Energy Supply

	Company, LLC regarding Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Paul Posoli on behalf of Calpine Energy Services, LP re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Paul Posoli on behalf of Calpine Energy Services, LP re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*Non-Public.
6/28/2002	Prepared direct testimony of Paul Posoli on behalf of Calpine Energy Services, LP re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*Protected Material.
6/28/2002	Direct testimony of John P White on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/28/2002	Direct testimony of Karin A Bulova on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Direct testimony of Robert McCullough on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Nevada Power Company and Sierra Pacific Power Company forwards prepared direct testimony regarding Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Prepared direct testimony and exhibits of Jonathan P Perry on behalf of Nevada Power Company & Sierra Pacific Power Company re Duke Energy Trading and Marketing LLC, Enron Power Marketing, Inc *et al.* under EL02-26 *et al.* Volume II of IV.
6/28/2002	Prepared direct testimony and exhibits of William Shepherd on behalf of Nevada Power Company & Sierra Pacific Power Company re Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.* Volume III of IV.

6/28/2002	Prepared direct testimony and exhibits of Robert McCullough on behalf of Nevada Power Company and Sierra Pacific Power Company re Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*Volume IV of IV.
6/28/2002	Nevada Power Company and Sierra Pacific Power Company submits prepared direct testimony of Michael Smart *et al.* and exhibits re Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Volume I of IV. Non-Public.
6/28/2002	Prepared direct testimony and exhibits of Robert Smart on behalf of Nevada Power Company and Sierra Pacific Power Company against Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*PROTECTED MATERIALS.
6/28/2002	Prepared testimony and exhibits submitted on behalf of Nevada Power Company and Sierra Pacific Power Company re Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*Protected Material.
6/28/2002	Prepared direct testimony of Michael R Smart on behalf Nevada Power Co *et al.* re Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

6/28/2002	Prepared direct testimony of Dale Stransky on behalf of the Office of Attorney General Bureau of Consumer Protection re Nevada Power Company's approval of its 2000 Resource Plan for the period of 7/1/00 through 6/30/19 under EL02-26 *et al.*
6/28/2002	Direct testimony of Dennis E Peseau on behalf of Southern Nevada Water Authority & the Las Vegas Valley Water District *et al.* re application of Nevada Power Co for approval of its 2000 Resource Plan for period 7/1/00-6/30/19 under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Dennis Schiffel on behalf of Sierra Pacific Power Company and Nevada Power Company regarding Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Morgan Stanley Capital Group Inc submits sworn testimony of William Hogan *et al.* re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Howard W Pifer on behalf of Morgan Stanely Capital Group Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*

6/28/2002	Prepared direct testimony of Simon T W Greenshields on behalf of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Kamal S Hamdan on behalf of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Thomas A Funk on behalf of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Frederick T Baird on behalf of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Anthony T Lupiano on behalf of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Edward J Zabrocki on behalf of Morgan Stanley Capital Group Inc re Nevada

	Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Robert J Mackay on behalf of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
6/28/2002	Morgan Stanley Capital Group Inc submits sworn testimony of William Hogan & Scott Harvey *et al.* re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*Non-Public.
6/28/2002	Prepared direct testimony of Scott M Harvey *et al.* on behalf of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*Protected Material.
6/28/2002	Prepared direct testimony of William C Reed and Vishal Apte on behalf of Amercian Electric Power Service Corp re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
6/28/2002	Prepared direct testimony of Vishal Apte on behalf of Amercian Electric Power Service Corp re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26

et al.

6/28/2002	Prepared direct testimony of Lisa Flowers on Behalf of Reliant Energy Services, Inc re Nevada Power Company *et al.* under EL02-32 *et al.*
6/28/2002	Prepared direct testimony of Lisa Flowers on behalf of Reliant Energy Services, Inc re Nevada Power Co *et al.* under EL02-32 *et al.* Protected Material.
6/28/2002	Direct testimony of Kerri Lonergan on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading Marketing, LLC *et al.* under EL02-26 *et al.*
7/1/2002	Order scheduling additional prehearing conference on 9/26/02 re Nevada Power Co and Sierra Pacific Power Co *et al.* under EL02-26 *et al.*
7/1/2002	Order scheduling additional prehearing conference re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/1/2002	Errata to the 6/28/02 prepared testimony of Frederick Baird on behalf of Morgan Stanley Capital Group, Inc re Nevada Power Company *et al.* v Duke Energy Trading and

	Marketing, LLC under EL02-26 *et al.*
7/2/2002	Letter to Presiding Judge Cintron Regarding Newly Discovered Evidence Concerning Morgan Stanley Capital Group Inc.'s Pending Motion to Disqualify Counsel Of Nevada Power Company under EL02-26 *ET AL.*
7/2/2002	Response to Letters of AEP & MSCG Under EL02-26-000, *et al.*
7/2/2002	Public Utility District 1 of Snohomish County, Washington's Notice of Substitution of black and white copy of direct testimony of Robert Mccullough (Exhibit SNO-17) for color copy re Nevada Power Company *et al.* under EL02-26 *et al.*
7/3/2002	Notice of Withdrawal of Motion To Compel Production of Southern California Water Company under EL02-26 *ET AL.*
7/3/2002	Answer to a Snohomish Motion to Bifurcate and Consolidate of Morgan Stanley Capital Group Inc. under EL02-26.
7/3/2002	Motion to intervene and answer to motion to bifurate and birucate of Mirant Amercias Energy Marketing, LP re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*

7/3/2002	Answer of American ELectric Power Service Corp to Public Utility District 1 of Snohomish County, Washington's motion to bifurcate complaint re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/5/2002	Proof of service of process of subpoena Duces Tecum to attend deposition and for documentary evidence re Public Utility District 1 of Snohomish County, Washington v Morgan Stanley Capital Group, Inc under EL02-26 *et al.*
7/5/2002	Motion of Morgan Stanley Capital Group, Inc for permission to take interlocutory appeal to the Commission from the portion of the 6/21/02 Order re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing *et al.*, EL02-26 *et al.*
7/8/2002	Order on motion to disqualify counsel for Nevada Power Co re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-33 *et al.*
7/8/2002	Order confirming ruling re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

7/8/2002	Order on motion to disqualify counsel for Nevada Power Co re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
7/8/2002	Order confirming ruling re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
7/8/2002	Transcript of 7/8/02 oral argument held in Washington, DC re Nevada Power Company & Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
7/9/2002	Order on motion for permission to take interlocutory appeal re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/9/2002	Order granting motion to intervene out of time filed by Public Utility District *No.*1 of Cheland County, WA re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/9/2002	Order on motion for permission to take interlocutory appeal of Morgan Stanley Capital Group Inc's re Nevada Power Company and Sierra

	Pacific Power Company v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
7/9/2002	Order granting motion to intervene out of time re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
7/9/2002	Notice of the City of Tacoma, Washington regarding its deposition of Micheal L Kirby re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
7/10/2002	Public Utility District *No.*1 of Snohomish County's notice of intent to depose James Herrling re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
7/12/2002	Motion for leave to intervene out of time of TransCanada Energy Ltd re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
7/15/2002	Motion of Indicated Respondents (BP Energy Co *et al.*) for reconsideration, or in the alternative, for leave to take interlocutory appeal & request for stay pendente lite re Nevada Power *et*

	al. v Duke Energy Trading & Marketing, *et al.*, EL02-26 *et al.*
7/15/2002	Answer of Indicated Respondents (BP Energy Co *et al.*) to motion of the City of Tacoma, WA to compel data responses re Nevada Power *et al.* v Duke Energy Trading & Marketing, *et al.*, EL02-26 *et al.*
7/15/2002	Enron Power Marketing Inc's First Set of Data Request to Sierra Pacific Power Company and Enron Power Marketing Inc's Third Set of Data Requests to Nevada Power Company dated 7/11/02 under EL02-26 *et al.*
7/15/2002	Notice of the City of Tacoma, Washington regarding its depositin of Micheal L Kirby re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
7/16/2002	Interlocutory appeal of Morgan Stanley Capital Group Inc of the denial of motion to take interlocutory appeal re Nevada Power Co *et al.* under EL02-26.
7/16/2002	Response of the City of Tacoma, Washington, to the request for expedited treatment contained in the motion of the indicated respondents for reconsideration, or in the alternative, for leave to take

	interlocutory appeal etc under EL02-56.
7/17/2002	Order granting Motion to Amend Restricted Service List to California Electricity Oversight Board's 7/15/02 filing on behalf of itself and the California Public Utiltities Commission re Nevada Power *et al.* v Duke Energy Trading etc under EL02-26 *et al.*
7/17/2002	Order amending restricted service list re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/17/2002	Notice of deposition of Micheal Shea on behalf of Stanley Morgan Capital Group, Inc re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/17/2002	Notice of deposition of Michael McMahon on behalf of Stanley Morgan Capital Group, Inc re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/17/2002	Notice of deposition of William Kemp on behalf of Stanley Morgan Capital Group, Inc re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

7/17/2002	Notice of deposition of Karin Bulova on behalf of Morgan Stanley Capital Group, Inc re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/17/2002	Answer of the City of Tacoma, Washington to Indicated Respondent's motion for reconsideration, ot in the alternative, for leave to take Interlocutary Appeals and request for stay Pendenite Lite etc under EL02-56 *et al.*
7/17/2002	Notice of Deposition of John White re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC Enron Power Marketing Inc, El Paso Merchant Energy, American Electric Power Services Corp etc under EL02-26 *et al.*
7/18/2002	Motion for reconsideration, or in the alternative for leave to take interlocutory appeal of the 7/8/02 order denying Morgan Stanley Capital Group's motion to disqualify Sidley, Austin, Brown & Wood re Nevada Power Co *et al.* under EL02-26 *et al.*
7/18/2002	Application for the issuance of subpeona duces tecum for Steven Oldham to attend deposition re Nevada Power Company and Sierra

	Pacific Power Company v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
7/22/2002	Answer of Public Utility District 1 of Snohomish County, Washington to motion of Morgan Stanley Capital Group Inc for interlocutory appeal of the denial of motion to take interlocutory appeal re Nevada Power Co *et al.* under EL02-26 *et al.*
7/22/2002	Southern California Water Co's & Public Utility District 1 of Snohomish County, Washington's motion to strike prepared direct testimony of Mirant Americas Energy Marketing, LP, Witness Joseph M Perillo etc re Nevada Power Co *et al.*, EL02-26 *et al.*
7/22/2002	Motion of Allegheny Energy Supply Co for summary disposition of Nevada Power Co's complaint against Allgheny and request for expedited consideration re Nevada Power Co and Sierra Pacific Power Co etc under EL02-26 *et al.*
7/22/2002	Notice of the City of Tacoma, Washington regarding its deposition of Mary Hain scheduled for 8/10/02 re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

7/22/2002	Notice of the City of Tacoma, Washington regarding its deposition of John Forney scheduled for 8/7/02 re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
7/22/2002	Joint motion to amend the protective order and request for expedited consideration regarding Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
7/23/2002	Order granting application of the City of Tacoma, Washington for the issuance of subpoena duces tecum regarding Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/23/2002	Order on motion for reconsideration or for leave to take interlocutory appeal and request for stay pendente lite re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
7/23/2002	Notice of determination bh the Chairman re Nevada Power Company and Sierra Pacific Power Co v Duke Energy Trading and Marketing LLC

	et al. under EL02-26 *et al.*
7/23/2002	Order on motion for reconsideraton or for leave to take interlocutory appeal and request for stay Pendente Lite re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
7/23/2002	Order granting application of the City of Tacoma, Washington for the issuance of Subpoena Duces Tecum re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
7/23/2002	Notice of determination by the Chairman re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading Marketing, LLC *et al.* under EL02-26.
7/24/2002	Order shortening time to respond to motion to strike prepared direct testimony of Mirant Americas Energy Marketing, LP, witness, Joseph M. Perillo and scheduling oral argument re Nevada Power Co *et al.* under EL02-26 *et al.*
7/24/2002	Answer of Nevada Power Company and Sierra Pacific Power Company to Motion for Reconsideration or in the Alternative for Leave to Take Interlocutory Appeal under EL02-26 *ET AL.*

7/24/2002	Order shortening time to respond to motion to strike prepared direct testimony of Mirant Americas Energy Marketing, LP, witness Joesph M Perillo and schedule oral argument re Nevada Power Co *et al.* under EL02-26 *et al.*
7/24/2002	Application of the City of Tacoma, Washington for issuance of subpoenas duces tecum to attend depositions & for document evidence re the Public Utility District 1 Snohomish County, Washington v Morgan Stanley Capital Group, Inc under EL02-26 *et al.*
7/25/2002	Order granting joint motion to amend the protective order re Nevada Power Company *et al.* v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
7/25/2002	Order granting joint motion to amend the protective order re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/25/2002	Order scheduling oral argument re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/25/2002	Application for the issuance of subpoena duces tecum for David X Kolk to attend deposition on behalf of

Mirant Amrericas Energy Marketing, LP re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

7/25/2002 Interlocutory appeal of the Indicated Respondents of the denial of motion for leave to take interlocutory appeal re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

7/25/2002 Order on motion for reconsideration, or in the alternative, for leave to take interlocutory appeal of the 7/8/02 order denying Morgan Stanley Capital Group's motion to disqualify Sidley, Austin, Brown & Wood under EL02-26 *et al.*

7/25/2002 Order scheduling oral arguement re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

7/25/2002 Order granting joint motion to amend the protective order re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*Protective order enclosed.

7/25/2002 Errata to application of the City of Tacoma, WA for the issuance of subpoenas duces tecum to attend depositions & for documentary evidenace re Nevada Power Co *et al.* v Duke Energy Trading & Marketing,

	LLC *et al.* under EL02-26 *et al.*
7/26/2002	Response of the City of Tacoma, Washington, to the request for expedited consideration contained in the interlocutory appeal of the indicated respondents of the denial of motion for leave to take interlocutory appeal under EL02-26 *et al.*
7/29/2002	Application of Morgan Stanley Capital Group, Inc for the Issuance of Subpoena Duces Tecum to attend depositions and for tangible evidence re Nevada Power Co & Sierra Pacific Power Co V Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/29/2002	Application of Morgan Stanley Capital Group, Inc for the Issuance of Subpoena Duces Tecum to attend depositions and for tangible evidence re Nevada Power Co & Sierra Pacific Power Co V Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
7/29/2002	Mirant Americas Energy Marketing, LP's *et al.* answer to motion to strike testimony re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
7/29/2002	Application of Morgan Stanley Capital Group, Inc for the issuance of subpoena duces tecum to attend

depositions and for tangible evidence re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

7/30/2002 Answer of the City of Tacoma, WA to interlocutory appeal of the Indicated Respondents of the denial of motion for leave to take interloculatory appeal re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.*, EL02-26 *et al.*

7/31/2002 Notice of the City of Tacoma, Washington re its deposition of Tim Belden re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

7/31/2002 Snohomish County, Washington submits the notice of disposition of Frederick T Baird *et al.* as a witness who submitted testimony on behalf of Morgan Stanley Capital Group Inc under EL02-26 *et al.*

7/31/2002 Morgan Stanley Capital Group, Inc's notice of intent to depose Robert McCullough re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing *et al.* under EL02-26 *et al.*

8/1/2002 Public Utility District 1 of Snohomish County, Washington submits an Errata fo the Notice of Desposition of

	Scott Harvey re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/1/2002	Mirant Americas Energy Marketing, LP's notice of deposition of Joel A Dickson re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*ls
8/1/2002	Interlocutory Appeal of Morgan Stanley Capital Group Inc of the denial of motion to take interlocutory appeal of the presiding Judge's 7/8/02 Order on disqualification of Sidley, Austin, Brown, & Wood under EL02-26 *et al.*wdc
8/1/2002	Notice of Determination by the Chairman re Allegheny Energy Supply Company, LLC, American Electric Power Service Corp *et al.* under EL02-26 *et al.*
8/2/2002	Notice of determination by the chairman re Allegheny Energy Supply Co, LLC *et al.* under EL02-26 *et al.*
8/5/2002	Answer of Nevada Power Company and Sierra Pacific Power Company to Interlocutory Appeal of the Denial of Motion to Take Interlocutory Appeal under EL02-26 *ET AL.*

8/5/2002	Motion for leave to take Interlocutory Appeal filed on August 1, 2002 by Stanly Morgan re Nevada Power Co & Sierra Pacific Power Company v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
8/5/2002	Indicated Respondents' answer to motion to strike testimony re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
8/6/2002	Response of Nevada Power Company and Sierra Pacific Power Comany to the August 5, 2002 letter of Morgan Stanley Capital Group, Inc. under EL02-26-000 *et al.*
8/6/2002	Nevada Power Co's opposition to Allegheny Energy Supply Co's motion for summary disposition re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/6/2002	Letter forwarding Prepared Direct Testimony and Exhibits of Howard B Forman, George M Shriver III, Jonathan Ogur, Natalie Y Tingle-Stewart re Nevada Power Co, *et al.* vs Duke Energy Trading & Marketing LLC, *et al.* under EL02-26, *et al.*
8/6/2002	Prepared Direct Testimony of Commission Statff Witness George M

	Shriver, III re Public Utility District 1 Snohomish County Washington v Morgan Stanley Capital Group, Inc under EL02-56.
8/6/2002	Prepared Direct Testimony & Answering Testimony of Jonathan D Ogur Witness for the Staff of the Federal Energy Regulatory Commission under EL02-26 *et al.*
8/6/2002	Prepared direct and answering testimony of Natalie Y Tingle-Stewart on behalf of FERC under EL02-26 *et al.*
8/6/2002	FERC Commission Staff submits Prepared Direct Testimony of Howard (Exhibit S-1), the Prepared Direct Testimony of George M Shriver III, (Exhibit S-2), *et al.* under EL02-26 *et al.* Protected Materials.
8/6/2002	First Set of Data Requets of Nevada Power Co *et al.* upon Allegheny Energy Supply Co, LLC re Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/6/2002	Nevada Power Co's second emergency motion to compel discovery from Allegheny Energy Supply Co, LLC; motion to reset the scheduling order, & request for expedited action re Duke Energy Trading & Marketing,

LLC *et al.* under EL02-26 *et al.*

8/7/2002 Order granting application of Mirant Americas Energy Marketing, LP for the issuance of Subpeona Duces Tecum for David X Kolk to attend deposition re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.*

8/7/2002 Order granting application of the City of Tacoma, Washington for the issuance of subpoena Duces Tecum to attend depositions and for documentary evidence re Nevada Power Co *et al.* under EL02-26 *et al.*

8/7/2002 Order confirming ruling of the oral argument on 8/07/02 re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

8/7/2002 Order granting application of Mirant Americas Energy Marketing, LP for the issuance of subpoena Duces Tecum for David X. Kolk to attend deposition re Nevada Co *et al.* under EL02-26 *et al.*

8/7/2002 Order granting application of the City of Tacoma, Washington for the issuance of Subpoena Duces Tecum to attend deposition etc re Nevada Power Co *et al.* v Duke Energy

	Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
8/7/2002	Order confirming ruling regarding Nevada Power Company & Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/7/2002	Transcript of 8/7/02 oral argument in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Volume 8, Pp 378-406.
8/8/2002	Notice of determination by the Chairman re Morgan Stanley Capital Group, Inc under EL02-26 *et al.*
8/8/2002	Notice of determination by the Chairman re Morgan Stanley Capital Group Inc under EL02-26 *et al.*
8/8/2002	Transcript of 8/8/02 oral argument in Washington, DC re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Matketing, LLC *et al.* under EL02-26 *et al.* Volume 9, Pp 407-509.
8/9/2002	Notice of the City of Tacoma, Washington regarding its depostiton of John M Forney re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

8/12/2002	Order granting intervention out-of-time of TransCanada Energy Ltd re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/12/2002	Order granting intervention out-of-time of Transcanada Energy Ltd re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC under EL02-26 *et al.*
8/12/2002	Order granting confirming rulings and scheduling oral argument re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/12/2002	Order confirming rulings & scheduling oral argument re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
8/13/2002	Notice of Morgan Stanley Capital Group Inc re withdrawal of its application for the issuance of Subpoena Duces Tecum to attend depositions etc re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
8/13/2002	Notice of Morgan Stanley Capital Group Inc regarding withdrawal of its application for the issuance of

Subpoena Duces Tecum etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

8/13/2002 Southern California Water Co's Notice of Deposition of Robert Schaefer re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

8/13/2002 Southern California Water Co's notice of diposition of J Stephen Henderson re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

8/14/2002 Notice of Morgan Stanely Capital Group Inc regarding the withdrawal of it application for the issuance of Subpoena Duces Tecum etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

8/14/2002 Errata notice to August 1, 2002 notice of determination by the chairman re Allegheny Energy Supply Co *et al.* under EL02-26 *et al.*

8/14/2002 Errata notice to 8/1/02 notice of determination by the Chairman re Allegheny Energy Supply Co, LLC *et al.* under EL02-26 *et al.*

8/14/2002 Orrick, Herrington & Sutcliff LLP request to be removed from the official

service list & Chadbourne & Parke LLP be added under EL02-26 *et al.*

8/16/2002 Snohomish County Public Utility District 1's notice of deposition for Michael O'Hare re Nevada Power Co and Sierra Pacific Power Company v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*

8/16/2002 Answer of Indicated Shippers in opposition to motion to intervene out of time of the City of Seattle, Washington under EL02-26 *et al.*

8/16/2002 Order granting in part and denying in part interlocutory appeal re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Dissent in part of Commissioner Brownell enclosed.

8/19/2002 Order granting in Part and Denying in Part Interloculatory Appeal re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under El02-26 *et al.*

8/19/2002 Portland General Electric Co's request for the substitution of Ronald W Johnson *et al.* to Michele Farrell re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

8/20/2002	Motion for leave to answer & answer of the Office of the Attorney General for the State of Nevada, Bureau of Consumer Protection to answer of Indicated Respondents in opposition to motion to intervene out of time etc, EL02-26 *et al.*
8/20/2002	Third motion of Public Utility District 1 of Snohomish County, WA to compel discovery from Morgan Stanley Capital Group, Inc, motion for sanctions, and request for expedited consideration re Nevada Power Co *et al.* under EL02-26 *et al.*
8/20/2002	Application of The City of Tacoma, Washington for the Issuance of a subpoena Duces Tecum to produce documents re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/21/2002	Order scheduling oral argument re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/21/2002	Notice of the City of Tacoma, Washington, regarding its deposition of Jeff Richter re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

8/21/2002	Order scheduling oral argument for 9/3/02 re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
8/21/2002	Public Utility District 1 of Snohomish County, WA submits errata toThird Motion to Compel Discovery from Morgan Stanley Capital Group, Inc, Motions for Sanctions, etc filed on 6/20/02 under EL02-26 *et al.*
8/21/2002	Public Utility District 1 of Snohomish County, Washington submits unredacted version of Exhibit B to its 6/20/02 filing of Third Motion to Compel etc re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC, EL02-26 *et al.*
8/22/2002	Order establishing responsive time frame to third motion to compel re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/22/2002	Order establishing responsive time frame to third motion to compel re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/22/2002	Nevada Power Co's emergency motion to compel discovery frorm Alleghenny Energy Supply Co, LLC etc re Nevada Power Co *et al.* v Duke Energy

	Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/22/2002	Responses of Allegheny Energy Supply Co, LLC to the First Set of Data Request of Nevada Power Co *et al.* re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/22/2002	Motion of Reliant Energy Services, Inc to strike transactions indentified as 2061 *et al.* re Nevada Power Co's *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/22/2002	Motion by Reliant Energy Services, Inc to strike transactions identified as *No.* 2061 *et al.* re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Protected Materials.
8/23/2002	Order scheduling discovery conference for 8/23/02 re Nevada Power Co *et al.* v Duke EnergyTrading & Marketing, LLC *et al.* under EL02-26 *et al.*
8/23/2002	Order denying City of Seattle, WA's motion for leave to intervene out of time re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Maketing, LLC *et al.* under EL02-26 *et al.*

8/23/2002	Order scheduling discovery conference for 8/23/02 re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
8/23/2002	Snohomish County Public Utility District *No.*1submits a new or corrected Notices of Depositions of the listed witnesses John Woodley *et al.* re Nevada Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
8/23/2002	Motion of Allegheny Energy Supply Co, LLC *et al.* to compel data responses & deposition testimony from Robert McCullough or, in the alternative, to strike testimony & exhibits under EL02-26 *et al.*
8/23/2002	Transcript of August 23, 2002 Telephone Conference in Washington DC re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Volume 10. Pp 510-569.
8/26/2002	Motion of Reliant Energy Services, Inc to compel production of Nevada Power Company under EL02-32 *et al.*
8/26/2002	Nevada Power Co *et al.* requests FERC to update the service lists by deleting Merril Kramer *et al.* from

Orrick, Herrington & Sutcliffe LLP and adding to Chadbourne & Parke LLP under EL02-26 *et al.*

8/27/2002 Order confirming rulings re Nevada Power Co and Sierra Pacific Power Corp v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*

8/27/2002 Order confirming rulings re Nevada Power Co and Sierra Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

8/27/2002 Prepared answering testimony of Joseph Kalt on behalf of El Paso Merchant Energy, LP, Calpine Energy Services, LP & BP Energy Co dated 8/27/02 re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

8/27/2002 Prepared Rebuttal Testimony of Lisa Flowers for Reliant Energy Services, Inc under EL02-32.

8/27/2002 Allegheny Energy Supply Co, LLC's motion to compel discovery of Nevada Power Co & opposition to Nevada Power Co's latest set of data requests to Daniel Gordon re Duke Energy Trading & Marketing LLC under EL02-26 *et al.*

8/27/2002 Answering Testimony of Robert Schaefer on Behalf of Mirant

	Americas Energy Marketing LP re Nevada Power Co and Sieera Pacific Power Co v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
8/27/2002	Answering Testimony of William Hieronymus on behalf of Mirant Americas Energy Marketing, LP re Nevada Power Company *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
8/27/2002	Prepared answering testimony of Simon T W Greenshields on behalf of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/27/2002	Prepared answering testimony of Thomas A Funk on behalf of Morgan Stanley Capital Group, Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/27/2002	Prepared answering testimony of Edward Zabrocki on behalf of Morgan Stanley Capital Group, Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
8/27/2002	Prepared answering testimony of Kamal S Hamdan on behalf of Morgan Stanley Capital Group, Inc re Nevada

Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

8/27/2002 Prepared answering testimony of Frederick T Baird on behalf of Morgan Stanley Capital Group, Inc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

8/27/2002 Prepared Answering Testimony of Terrence Page on behalf of Calpine Energy Services, LP, El Paso Merchant Energy, LP, BP Energy Co, American Electric Power Service Corp, and Reliant Energy Services, Inc under EL02-26 *et al.*

8/27/2002 Prepared Answering Testimony of T Page on behalf of Calpine Energy Services, LP, El Paso Merchant Energy, LP *et al.* re Nevada Power Co & Sierra Power Co v Duke Energy Trading & Marketing, LLC *et al.*, EL02-26 *et al.* SEALED.

8/28/2002 Order scheduling oral argument re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC etc under EL02-26 *et al.*

8/28/2002 Order scheduling oral argument for 9/5/02 re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing LLC *et al.*

under EL02-26 *et al.*

8/29/2002 El Paso Merchant Energy, LP's notice of intent to depose Robert McCullough re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC etc under EL02-26 *et al.*

8/30/2002 Answering Testimony of J Stephen Henderson on behalf o Mirant Americas Energy Marketing, LP re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

8/30/2002 Prepared answering testimony of Scott M Harvey & Williams W Hogan on behalf of Morgan Stanley Capital Group Inc *et al.* under EL02-26 *et al.*

8/30/2002 Nevada Power Co and Sierra Pacific Power Co's Notice of Deposition of Thomas Boland *et al.* re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

8/30/2002 Nevada Power Co's second emergency motion to compel discovery from Allegheny Energy Supply Co LLC; motion to reset the scheduling order etc re Duke Energy Trading & Marketing LLC etc under EL02-26 *et al.*

8/30/2002	Morgan Stanley Capital Group Inc's opposition to the motion to compel data responses of Public Utility District 1 of Snohomish County, Washington and motion for a protective order re Nevada Power Co *et al.* under EL02-26 *et al.*
8/30/2002	Response of Public Utility District 1 of Snohomish County, WA to motion of Indicated Respondents to compel data responses etc re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
8/30/2002	Snomish County PUD 1, WA's response to Motion of Indicated Respondents to Compel Data Responses etc re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.* NON-PUBLIC.
9/3/2002	Answer/Response to a Pleading/Motion of People of the State of California under EL02-26 *ET AL.*
9/3/2002	Transcript of 9/3/02 oral argument in Washington, DC re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Volume 11, Pp 570-635.
9/4/2002	Order Confirming Rulings re Nevada

Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing LLC etc under EL02-26 *et al.*

9/4/2002 Order amending order scheduling oral argurment re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/4/2002 Order confirming rules re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/4/2002 Order amending order scheduling oral argument re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC under EL02-26 *et al.*

9/4/2002 Opposition of Allegheny Energy Supply Co, LLC to Nevada Power Co's second emergency motion to compel discovery re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC under EL02-26 *et al.*

9/4/2002 Morgan Stanley Capital Group, Inc's notice of deposition of Eric Christensen at Public Utilitiy District *No.*1 of Snohomish County, CA under EL02-26 *et al.*

9/4/2002 Morgan Stanley Capital Group Inc's notice of deposition scheduled for 9/18/02 re Nevada Power Co & Sierra

	Pacific Power Co v Duke Energy Trading & Marketing *et al.* under EL02-26 *et al.*
9/4/2002	Notice of Deposition of Glen McPherson on behalf of Public Utility District 1 of Snohomish County re Neveda Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
9/5/2002	Emergency motion for extension of time until 9/30/02 to submit rebuttal testimony and request for expedited consideration re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
9/5/2002	Motion to intervene for a limited purpose by the People of the State of California Ex Rel Bill Lockyer, Attorney General re Nevada Power Co *et al.* v Duke Energy Trading & Marketing *et al.* under EL02-26 *et al.*
9/5/2002	Transcript of 9/5/02 oral argument in Washington, DC re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Volume 12, Pp 636-853.
9/6/2002	Indicated Respondents' Answer Opposing Joint Movants' Emergency Motion for Extension of Time to Submit Rebuttal Testimony and

	Request for Expedited Consideration, under EL02-26-000 *et al.* (consolidated)
9/6/2002	Supplement Indicated Respondents' Answer Opposing Joint Movants' Emergency Motion for Extension of Time to Submit Rebuttal Testimony and Request for Expedited Consideration, under EL02-26-000 *et al.* (consolidated)
9/6/2002	Nevada Power Co's answer to Reliant Energy Services, Inc's Motion to Strike Transactions identified as *No.* 2061 *et al.* under EL02-26 *et al.*
9/6/2002	City of Tacoma, Washington submits proof of service of subpoenas duces tecum to attend a deposition and produce documentary evidence in the proceeding under EL02-26 *et al.*
9/6/2002	Nevada Power Company's Supplemental Opposition to Allegheny Energy Supply Company's Motion For Summary Disposition under EL02-26 *et al.*
9/6/2002	Nevada Powewr Company's Supplemental Opposition to Allegheny Energy Supply Company's Motion for Summary Disposition under EL02-26 *et al.*Non-Public.
9/9/2002	Public Utiltiy District *No.*1 of Snohomish County's Notice of Intent

to depose Karin Bulova re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*

9/9/2002 Order confirming rulings re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/9/2002 Supplement Indicated Respondents' Answer Opposing Joint Movants' Emergency Motion for Extension of Time to Submit Rebuttal Testimony and for Expedited Consideration, under EL02-26, *et al.* (consolidated).

9/9/2002 Motion of Nevada Power Co and Sierra Pacific Power Co for extension of time to 9/13/02 to respond to answering testimony of Enron Power Marketing, Inc and expedited consideration re Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*

9/9/2002 Mirant Americans Energy Marketing LP notice of deposition of Gordon TC Taylor re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*

9/9/2002 Joint motion of Nevada Power Company and Sierra Pacific Power Company to intervene and to amend complaint re Duke Energy Trading

and Marketing LLC *et al.* under EL02-26 *et al.*

9/10/2002 Order on Motion for Extension of Time re Navada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/10/2002 Order on Emergency Motion for Extension of Time to submit rebuttal testimony re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/10/2002 Nevada Power Co & Sierra Pacific Power Co's amended notice of deposition of Lisa Flowers re Nevada Power Co re Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/10/2002 Nevada Power Co & Sierra Pacific Power Company's amended notice of deposition of Dennis Price re Duke Energy & Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/10/2002 Nevada Power Co's second supplemental opposition to Allegheny Energy Supply Co's motion for summary disposition re Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/10/2002	Nevada Power Co's second supplemental opposition to Allegheny Energy Supply Co's motion for summary disposition re Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.* Non-Public.
9/11/2002	Answer of Reliant Energy Services, Inc. to the Answer of Nevada Power Company to Motion to Strike Transactions Identified as Nos. 2061, 2062, 2063, 2064 under EL02-26 *ET AL.*
9/12/2002	Calpine Energy Services, LP submits an application for the issuance of a Subpoena Duces Tecum for Mark A Ruelle to attend deposition & provide documentary evidence under EL02-26 *et al.*
9/12/2002	Transcript of September 12, 2002 oral argument in Washington DC re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.* Volume 13, Pp 854-906.
9/13/2002	Order setting complaints for hearing, establishing hearing produres, & consolidating proceedings re Public Utility District 1 Snohomish County, Washington v Morgan Stanley Capital Group, Inc under under EL02-56 *et al.*
9/13/2002	Order confirming rulings re Nevada

Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/13/2002 Order on in camera review of documents re Nevada Power Co *et al.* under EL02-26 *et al.*

9/13/2002 Motion of Duke Energy Trading & Marketing, LLC for Closure of Docket No. EL02-26-000.

9/13/2002 Motion of Duke Energy Trading & Marketing, LLC for Closure of Docket No. EL02-26-000.

9/13/2002 Rebuttal Testimony & Exhibits of City of Tacoma, Washington re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-56 *et al.* Part 1 of 2.

9/13/2002 City of Tacoma, WA submits Rebuttal Testimony and Exhibits of under EL02-26 *et al.* Part 2 of 2.

9/13/2002 Rebuttal Testimony of Nevada Power Company and Sierra Pacific Power Company re Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/13/2002 Prepared Rebuttal Testimony of David I Toof on behalf of Nevada Power Co and Sierra Pacific Power Co re Duke Energy Trading and

	Marketing LLC *et al.* under EL02-26 *et al.*
9/13/2002	Prepared Rebuttal Testimony of Steven C Oldham on behalf of Nevada Power Co and Sierra Pacific Power Co re Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
9/13/2002	Prepared Rebuttal Testimony of Jonathan P Perry on behalf of Nevada Power Co and Sierra Pacific Power Co re Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
9/13/2002	Prepared Rebuttal Testimony of James Joyce re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
9/13/2002	Rebuttal testimony of Joel A Dickson on behalf of Southern California Water Co re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
9/13/2002	Summary of Prepared Rebuttal Testimony of Gordon TC Taylor (Exhibit SCW-20) on behalf of Southern California Water Co re Nevada Power Co *et al.* v Duke Energy Trading and Marketing LLC under EL02-26 *et al.*

9/13/2002	Rebuttal Testimony of Karin A Bulova on behalf of Public Utility District 1of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Part 1 of 3.
9/13/2002	Rebuttal Testimony & exhibits of Timothy D Mount on behalf of Public Utility District 1of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Part 2 of 3.
9/13/2002	Rebuttal testimony and exhibits on behalf of Public Utility District 1of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Part 3 of 3.
9/13/2002	Rebuttal Testimony and Exhibits on behalf of Public Utility District 1of Snohomish County, WA re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Part 1 of 3.Protected Material. CD enclosed.
9/17/2002	Supplemental Notice Open Meeting Agenda Wednesday, 9/18/02, 10:00am Commission Meeting Room 2nd Floor, Room 2c under AD02-1 *et al.*
9/17/2002	Order rescheduling additional

	prehearing conference re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Maketing, LLC *et al.* under EL02-26 *et al.*
9/17/2002	Public Utility District of 1 of Snohomish County, Washington forwards Rebuttal Testimony of Robert McCullough (Exhibit SNO-63) under EL02-26 *et al.*
9/17/2002	Public Utility District 1 of Snohomish County, Washington submits the Rebuttal Testimony of Robert McCullough (Exhibit SNO-63) re Nevada Power Co *et al.* v Sierra Pacific Power Co under EL02-26 *et al.* Non Public.
9/18/2002	The City of Tacoma, Washington request that pages marked confidential be included in the Rebuttal Testimony and Exhibits filed 9/13/02 re Nevada Power, *et al.* under EL02-26 *et al.*
9/19/2002	Prepared Rebuttal Testimony of Wiliams G Shepherd and Richard E Goldberg re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
9/19/2002	Prepared Rebuttal Testimony of Dennis D Schiffel re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading &

Marketing, LLC *et al.* under EL02-26 *et al.*

9/19/2002 Prepared Rebuttal Testimony of Dennis D Schiffel re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/19/2002 Indicated Respondents' request to Supplement Procedural Schedule re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/19/2002 Notice of deposition of Mark Ruelle on behalf of Calpine Energy Services LP regarding Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/19/2002 Notice of Deposition for Natalie Y Tingle-Stewart re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/19/2002 Notice of deposition of Howard B Forman on behalf of Nevada Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/19/2002 Exhibit MSC-117 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Collateral Threshold Calculations Summary on January 26, 2001.

9/20/2002 Procedural Motion of Indicated Respondents, *et al.* under EL02-26 *ET AL.*

9/20/2002 Motion of Nevada Power Co *et al.* for extension of time to respond to direct & answering testimony of Allegheny Energy Supply Co, LLC *et al.* re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.*, EL02-26 *et al.*

9/20/2002 Calpine Energy Service LP's proof of service of process of subpoena duces tecum for Mark Ruelle to attend deposition and provide documentary evidence re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, L under EL02-26 *et al.*

9/20/2002 Revised notice of deposition of Mark A Ruelle on behalf of Calpine Energy Services, LP re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/20/2002 Public Utility District *No.*1 of Snohomish County, WA submits corrections of Exhibit SNO-82 *et al.* to the Rebuttal Testimony of William Kemp re Nevada Power Co *et al.* v

Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*

9/20/2002 Snohomish County Public Utility District 1 submits corrections made to William Kemp's rebuttal testimony filed on 9/13/02 re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.*under EL0-26 *et al.*

9/23/2002 Allegheny Energy Supply Co, LLC's answer in opposition to motion of Nevada Power Co for extension of time to respond to direct and answering testimony of Allegheny Energy Supply Co, LLC etc under EL02-26 *et al.*

9/23/2002 Order setting complaints for hearing, establishing hearing procedures, & consolidating proceeding re Public Utility District 1 of Snohomish County, Washington v American Electric Power Service Corp *et al.* under EL02-100 *et al.*

9/23/2002 Allegheny Energy Supply Co, LLC's motion for leave to file affidavit and to amend exhibit numbers of direct testimony re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/24/2002 Motion of American Electric Power Service Corp *et al.* to strike the rebuttal testimony & exhibits of the

City of Tacoma, Washington re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/24/2002 Protest and motion of the City of Tacoma, Washington to remove item from agenda for 9/20/02 Pre-Hearing Conference re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/24/2002 Reply of Nevada Power Co and Sierra Pacific Power Co in support of motion for extension of time to respond to direct and answering testimony of Allegheny Energy Supply Co, LLC *et al.* under EL02-26 *et al.*

9/24/2002 Sierra Pacific Power Co *et al.* submits the proposed supplement to procedural schedule re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26.

9/24/2002 Enron Power Marketing, Inc's response to First Discovery's request of the Public Utilities Commission of Nevada re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/24/2002 Consent Motion for Order adopting stipulation of Mirant Americas Energy Marketing, LP re Nevada Power Co *et al.* v Duke Energy

Trading & Marketing LLC *et al.* under EL02-26 *et al.*

9/24/2002 Motion of Indicated Respondents to Compel Data Responses from Nevada Power Company and Sierra Pacific Power Company under EL02-26 *et al.*

9/25/2002 Order confirming rulings re Nevada Power Co's *et al.* under EL02-26 *et al.*

9/25/2002 Transcript of 9/25/02 Hearing held in Washington, DC re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.* Volume 14, pages 907-952.

9/27/2002 Morgan Stanley Capital Group, Inc's notice of intent to depose Robin G Adman's re Nevada Power Co *et al.* v Duke Energy Trading & Marketing *et al.* under EL02-26 *et al.*

9/27/2002 Answer of City of Tacoma, Washington to Motion of Indicated Respondents to Strike Rebuttal Exhibits re Snohomish County Public Utility District *No.* 1 v Morgan Stanley Capital Group, Inc under EL02-26 *et al.*

9/27/2002 Conditional Motion of City of Tacoma, Washington to Strike Exhibits of Enron Power Marketing, Inc. under EL02-26 *et al.*

9/27/2002	Opposition of Duke Energy Trading and Marketing, L L.C to Motion of Indicated Respondents to Compel, under EL02-26 *ET AL.*
9/27/2002	Motion of Morgan Stanley Capital Group Inc to strike or limit the rebuttal testimony of William J Kemp on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* under EL02-26 *et al.*
9/27/2002	motion of American Electric Power Service Corp's *et al.* to strike portions of the Nevada Companies' Exhibits Nev-3 & NPC-13 re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC under EL02-26 *et al.*
9/27/2002	Order of Witnesses & List of Witnesses for which Cross-examination is waived of the Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* under EL02-26 *et al.*
9/27/2002	Nevada Power Company's Emergency Motion to Compel Discovery from Allegheny Energy Supply Company, LLC and Request for Expedited Consideration under EL02-26 *et al.*
9/27/2002	Answer of Nevada Power Company and Sierra Pacific Power Company in opposition to motion of Indicated

	Respondents to Compel Data Responses under EL02-26 *et al.*
9/27/2002	Motion of Morgan Stanley Capital Group Inc to limit the rebuttal testimony of Robin G Adams submitted on behalf of the Public Utility District 1 of Snohomish County, Washington under EL02-26 *et al.*
9/27/2002	Motion of Nevada Power Co & Sierra Pacific Power Co to strike testimony of Terrence Page & other testimony of the prudence etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
9/27/2002	Motion of Nevada Power Co *et al.* to strike testimony of Thomas F Boland re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
9/27/2002	Witness list of Nevada Power Co and Sierra Pacific Power Co re Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
9/27/2002	Morgan Stanley Capital Group's Motion to Strike The Rebuttal Testimony of Barbara J Beck, Portions of the Rebuttal Testimony of John P White, and Exhibit SNO-48

etc under EL02-26 *et al.*

9/27/2002 Motion of Morgan Stanley Capitol Group Inc to strike the testimony of Certain Ratepayers etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/27/2002 Motion of Morgan Stanley Capital Group Inc to Strike Portions of the Testimony of Karen Bulova, James Herling, and John P White re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC under EL02-26. SC

9/27/2002 Southern California Water Co's motion to compel Mirant Americas Energy Marketing's responses to its third set of data requests etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/27/2002 Motion to Compel Mirant Americas Energy Marketing's Responses to Southern California Water Co's Third Set of Data Requests, or , in the Alternative, to Strike Portions of MAEM etc under EL02-26 *et al.*

9/27/2002 Motion of Public Utility District 1 of Snohomish County, Washington to compel data responses or, in the alternative to strike the direct & answering testimony, &

accompanying exhibits, of Scott M Harvey *et al.* under EL02-26 *et al.*

9/27/2002 Motion of the Public Utility District *No.* 1 of Snohomish County, Washington to Compel Data Responses or in the Alternative, to Strike the Direct Answering Testimony etc under EL02-26 *et al.* Protected Material.

9/27/2002 Prepared rebuttal testimony & exhibits of James J White on behalf of Nevada Power Company & Sierra Pacific Power Company re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/27/2002 Prepared testimony & exhibits submitted on behalf of Nevada Power Co *et al.* re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.* Volume III of IV.

9/27/2002 Prepared rebuttal testimony & exhibits submitted on behalf of Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.* Volume IV of IV.

9/27/2002 Prepared rebuttal testimony and exhibits submitted on behalf of Nevada power Co and Sierra Pacific Power Co under EL02-26 *et al.* Non-

Public.

9/27/2002 Motion of Morgan Stanley Capital Group, Inc for partial summary disposition of the complaint of Public Utility District No 1 of Snohomish County, Washington and for expedited consideration under EL02-26 *et al.*

9/27/2002 Motion of Morgan Stanely Capital Group Inc for partial summary disposition of the complaint of PUD *No.* 1 of Snohomish County etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/30/2002 Order granting Motion for Removal of Duke Energy Trading and Marketing, LLC and Docket EL02-26 from the case caption re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/30/2002 Order confirming rulings re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

9/30/2002 Application of Morgan Stanley Capital Group Inc for the issuance of subpoena to attend hearing for Glenn McPherson re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26

et al.

9/30/2002 Application of Morgan Stanley Capital Group Inc for the issuance of subpoena to attend hearing for Eric Christensen re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC under EL02-26 *et al.*

9/30/2002 Reliant Energy Services, Inc's witness list & list of witnesses for whom cross examination is waived re Nevada Power Co *et al.* v Duke Energy Trading & Marketing , LLC *et al.* under EL02-26 *et al.*

9/30/2002 American Electric Power Service Corp's order of witnesses and list of witnesses for which cross-examinations waived re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/30/2002 Calpine Energy Services LP's order of witnesses & list of witnesses for which cross-examination is waived re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

9/30/2002 Opposition of Public Utility District 1 of Snohomish County, Washington to request of Morgan Stanley Capital Group Inc for the imposition of a shortened response time to motion for partial summary disposition under

EL02-26 *et al.*

9/30/2002 Morgan Stanley Capital Group, Inc's motion to compel data responses from Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

9/30/2002 Public Utility District 1 of Snohomish County, Washington submits the Public Version of an Emergency Motion to Compel against Morgan Stanley Capital Group etc under EL02-26 *et al.*

9/30/2002 Public Utility District of Snohomish County, Washington submits the Privileged Version of an Emergency Motion to Compel against Morgan Stanley Capital Group Inc etc re Nevada Power Co *et al.* under EL02-26 *et al.* Non-Public.

10/1/2002 Rebuttal Testimony of John P White on behalf of Public Utility District *No.*1 of Snohomish County, Washington re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading, and Marketing LLC *et al.* under EL02-26 *et al.*

10/1/2002 Direct testimony of Jack Heath on behalf of Public Utility District 1of Snohomish County, Washington re Nevada Power Co *et al.* v Duke

Energy Trading & Marketing LLC under EL02-26 *et al.*

10/1/2002 Order confirming rulings re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

10/1/2002 Order scheduling oral argument for 10/2/02 re Nevada Power Co *et al.* v Enron Power marketing, Inc *et al.* under EL02-28 *et al.*

10/1/2002 Answer/Response to a Pleading/Motion of Indicated Respondents under EL02-26 *ET AL.*

10/1/2002 Notice of Withdrawal of Conditional Motion of City of Tacoma, Washington to Strike Exhibits of Enron Power Marketing, Inc. under EL02-28 *et al.*

10/1/2002 Opposition of Indicated Respondents to Motion of Nevada Power Company and Sierra Pacific Power Company to Strike Testimony of Terrence Page and Other Testimony on the Prudence of Purchases of Power

10/1/2002 Amended Motion to Compel of Morgan Stanley Capital Group Inc to Compel Data Responses of Snohomish County, Public Utility District *No.*1 re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

10/1/2002	Motion to withdraw Southern California Water Co's motion to compel Mirant Americas Energy Marketing's responses to Southern California Water Co's third set of data requests, or, in the alternative, to strike etc under EL02-26 *et al.*
10/1/2002	Reliant Energy Services, Inc submits Amended Witness List and List of Witnesses for whom Cross Examination is Waived under EL02-26 *et al.*
10/1/2002	Motion to Withdraw Nevada Power Co's Emergency Motion to Compel Discovery from Allegheny Energy Supply Co, LLC, and Request for Expedited Consideration re Sierra Pacific Power Co *et al.* under EL02-26 *et al.*
10/1/2002	Motion of Mirant Americas Energy Marketing, LP to Compel Public Utility District *No.* 1 of Snohomish County, Washington's Responses to Data Requests & Motion for Expedited Consideration etc under EL02-26 *et al.*
10/1/2002	Morgan Stanley Capital Group Inc's answer in opposition to the motion of PUD *No.*1 of Snohomish County etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

10/1/2002	Response of Nevada Power Co and Sierra Pacific Power Co to motion of American Electric Power Service Corp, *et al.* to strike portions of the Nevada Companies' Exhibit re Duke Energy Trading & Marketing LLC under EL02-26 *et al.*
10/1/2002	Transcript of the 10/1/02 oral argument in Washington, DC re Nevada Power Co *et al.* under EL02-26 *et al.* Volume 16, Pp 1004 -1042.
10/1/2002	Public Utility District 1 of Snohomish County, WA submits Opposition to Morgan Stanley Capital Group, Inc's Motion to Strike and Limit Testimony re Nevada Power Co *et al.* v Enron Power Marketing *et al.* under EL02-28 *et al.*
10/1/2002	Public Utility District 1 of Snohomish County, WA's Opposition to Morgan Stanley Capital Group, Inc's Motions to Strike and Limit Testimony re Nevada Power Co *et al.* under EL02-28 *et al.*
10/1/2002	Morgan Stanley Capital Group Inc's answer in opposition to the motion of Public Utility District 1 of Snohomish County, Washington to Compel data responses re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* EL02-26 *et al.*

10/1/2002	Morgan Stanley Capital Group Inc's answer in opposition to the motion of the Public Utility Dist 1 of Snohomish County, WA to compel data responses re Nevada Power *et al.* v Enron Power Marketing, Inc under EL02-26 *et al.* PROTECTED.
10/2/2002	Prepared rebuttal testimony & exhibits of Richard J Pierce, Jr on behalf of Nevada Power Co re Sierra Pacific Power Co *et al.*l v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
10/2/2002	Prepared rebuttal testimony of Robert C Means on behalf of Nevada Power Co re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
10/2/2002	Transcript of October 2, 2002 oral argument in Washington, DC regarding Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*
10/2/2002	Application of Mirant Americas Energy Marketing, LP for the issuance of subpoena to attend hearing regarding the Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

10/2/2002	Application of Public Utility District 1 of Snohomish County, WA for the issuance of subpoena to attend hearing re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
10/2/2002	Transcript of 9/30/02 oral argument in Washington, DC re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Volume 15, Pp 953-1003.
10/2/2002	Answer of Public Utility District I of Snohomish County, Washington to motion of Morgan Stanley Capital Group, Inc etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
10/2/2002	Answer of Public Utility District 1 of Snohomish County, Washington to motion of Morgan Stanley Capital Group, Inc etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Non-Public.
10/2/2002	Exhibit MSC-105 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Robert McCullough.
10/3/2002	Order confirming ruling re Nevada

	Power Co & Sierra Pacific Power Col v Enron Power Marketing *et al.* under EL02-28 *et al.*
10/3/2002	Order Confirming Rulings re Nevada Power Company and Sierra Pacific Power Company v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*
10/3/2002	Transcript of 10/02/02 oral argument held in Washington, DC re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*Pages 1043-1216.Volume 17.
10/4/2002	Adopted Testimony of Yair Yaish on behalf of Allegheny Energy Supply Company, LLC re Nevada Power Company and Sierra Pacific Power Company v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
10/4/2002	Snohomish County Public Utility District submits corrected copies of the 2000 Power Supply Risk Management Policies and Procedures Manual re Nevada Power Co *et al.* v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
10/7/2002	MORGAN STANLEY CAPITAL GROUP INC.'S EMERGENCY MOTION TO COMPEL COMPLIANCE WITH THE SEPTEMBER 25, 2002 ORDER TO

IDENTIFY EXHIBITS CONTAINING PROTECTED INFORMATION, under EL02-26 *ET AL.*

10/7/2002 Joint Stipulation of Southern California Water Co *et al.* and request to withdraw application for subpoena of Mirant Americas Energy Marketing LP re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*

10/7/2002 Morgan Stanley Capital Group Inc's emergency motion for protection of exhibits containing confidential information & request for expedited treatment re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.*, EL02-26 *et al.*

10/7/2002 Transcript of 10/07/02 Hearing held in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.* Volume 1, Pages 1267 -1507

10/7/2002 Exhibit SNO-60 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Rebuttal Testimony of Miles Bidwell on behalf of Public Utility District 1 of Snohomish County, Washington *et al.*

10/7/2002 Exhibit SNO-61 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

	Statement of Qualifications of Miles O Bidwell, Jr.
10/7/2002	Exhibit SNO-62 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Declaration of James Detmers.
10/7/2002	Exhibit SNO-65 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Thomas Funk.
10/7/2002	Exhibit SNO-68 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Thomas Funk.
10/7/2002	Exhibit MSC-101 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Report on Wholesale Electric Generation Investigation.
10/7/2002	Exhibit MSC-102 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Miles Bidwell.
10/7/2002	Exhibit MSC-103 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Transaction Confirmation re Williams Emerging Products Energy Marketing and Trading.

10/7/2002	Exhibit MSC-104 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Generating Unit Statistical Brochure for 1995-1999 Report.
10/7/2002	Exhibit MSC-106 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Robert McCullough
10/7/2002	Exhibit MSC-107 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Continued Deposition of Robert McCullough. Part 1 of 2.
10/7/2002	Exhibit MSC-107 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Continued Deposition of Robert McCullough. Part 2 of 2.
10/7/2002	Exhibit MSC-108 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: West Coast Power Markets Report
10/8/2002	Transcript of 10/8/02 hearing in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*, Volume 20, Pp 1508-1706.
10/8/2002	Exhibit MSC-111 in Nevada Power Co and Sierra Pacific Power Company's

	proceeding under EL02-28 *et al.*: Key Points about the PUD October 2001 Rate Increase.
10/8/2002	Exhibit MSC-112 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Minutes of Risk Management Committee Meeting held on February 20, 2001.
10/8/2002	Exhibit MSC-114 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.* :Public Utility District 1 of Snohomish regular meeting minutes.
10/8/2002	Exhibit MSC-115 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Snohomish County Public Utility District 1, Power Supply Update.
10/8/2002	Exhibit MSC-116 of Nevada Power Co and Sierra Pacific Gas Power Co's proceeding under EL02-28 *et al.*: Public Utility District 1 of Snohomish County's Special Meeting held on 12/13/00.
10/8/2002	Exhibit MSC-117 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Minutes of Risk Management Committee's January 25, 2001 meeting regarding the credit limit

policies & credit limit analysis.

10/8/2002 Exhibit MSC-119 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Graph of 2000 & 2001 Forward Curve Documents (MSC-SNO-11).

10/8/2002 Exhibit MSC-120 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Master Purchase & Sale Agreement.

10/8/2002 Exhibit SNO-63 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Rebuttal Testimony of Robert McCullough on behalf of Public Utility District 1 of Snohomish County, Washington.

10/8/2002 Exhibit SNO-1 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct testimony of John P White of behalf of Public Utility District 1 of Snohomish County, Washington.

10/8/2002 Exhibit SNO-2 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: News Release re Skyrocketing market prices are driving Bonneville Power Administration rates up.

10/8/2002 Exhibit SNO-3 in Nevada Power Co & Sierra Pacific Power Co's proceeding

	under EL02-28 *et al.*:News Release re Bonneville Power Administration rates staff & utility customers reach.
10/8/2002	Exhibit SNO-17 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct testimony of Robert McCullough on behalf of public Utility District 1 of Snohomish County, Washington.
10/8/2002	Exhibit SNO-18 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Robert McCullough' s employment experience
10/8/2002	Exhibit SNO-19 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Diagram.
10/8/2002	Exhibit SNO-20 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Memo dated 12/6/00
10/8/2002	Exhibit SNO-21 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Memo dated 5/15/02.
10/8/2002	Exhibit SNO-21A in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Memo dated 6/17/02 re ricochets with

LWDP.

10/8/2002 Exhibit SNO-22 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Letter dated 5/25/01 expressing concerns about the failure of FERC to act effectively to enforce the provisions of the FPA etc.

10/8/2002 Exhibit SNO-45 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Rebuttal testimony of Barbara J Beck on behalf of Public Utility District 1 of Snohomish County, Washington.

10/8/2002 Exhibit SNO-46 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Erratta to the Public Version of the Rebuttal Testimony of John P White on behalf of PUD 1 of Snohomish County, Washington.

10/8/2002 Exhibit SNO-47 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Simon T.W. Greenshields, dated 9/6/02.

10/8/2002 Exhibit SNO-48 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Short Term Power Supply Risk Management Polices and Procedures Manual for PUD 1 of Snohomish

County, Washington.

10/8/2002 Exhibit SNO-49 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of John A C Woodley.

10/8/2002 Exhibit SNO-50 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Kamal Hamdan dated 09/09/02

10/8/2002 Exhibit SNO-52 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Total Disconnects Year to Date Report during the period of 01/00 through 07/02.

10/8/2002 Exhibit SNO-66 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Simon T W Greenshields.

10/8/2002 Exhibit SNO-67 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of John AC Wodley.

10/8/2002 Exhibit SNO-64 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Map.

10/8/2002 Exhibit SNO-70 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Deposition of Simon T W Greenshields.

10/8/2002 Exhibit SNO-125 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Desposition of Simon T W Greenshields.

10/8/2002 Exhibit SNO-72 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Disposition of Robert McCollough for Morgan Stanley Capital Group.

10/8/2002 Exhibit MSC-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Record of Telephone Call between Kamal Kamdan and Ed Zabrocki *et al.* Part 1 of 9.

10/8/2002 Exhibit MSC-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Record of Telephone Call between Kamal Kamdan and Ed Zabrocki *et al.* Part 2 of 9.

10/8/2002 Exhibit MSC-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Record of Telephone Call between Kamal Kamdan and Ed Zabrocki *et al.* Part 3 of 9.

10/8/2002 Exhibit MSC-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Record of Telephone Call between Kamal Kamdan and Karin Bulova *et al.* Part 4 of 9.

10/8/2002 Exhibit MSC-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Record of Telephone Call between Kamal Kamdan and Tom Funk *et al.* Part 5 of 9.

10/8/2002 Exhibit MSC-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Record of Telephone Call between Kamal Hamdan and Bob Fasadudo *et al.* Part 6 of 9.

10/8/2002 Exhibit MSC-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Record of Telephone Call between Kamal Kamdan and Ed Zabrocki *et al.* Part 7 of 9.

10/8/2002 Exhibit MSC-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Record of Telephone Call between Kamal Kamdan and Ed Zabrocki *et al.* Part 8 of 9.

10/8/2002 Exhibit MSC-11 in Nevada Power Co

& Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Record of Telephone Call between Kamal Kamdan and Ed Zabrocki *et al.* Part 9 of 9.

10/8/2002 Exhibit MSC-109 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Energy Risk Management Policies & Procedures Manual.

10/8/2002 Exhibit MSC-110 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Power Market Update & the related financial impacts for Snohomish County PUD 1 Board of Commissioners.

10/8/2002 Exhibit SNO-64 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Map. LARGE FORMAT ONLY.

10/9/2002 Transcript of 10/9/02 hearing in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.* Volume 21, pages 1707-1986.

10/9/2002 Exhibit MSC-117 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:January 2001 Power Supply RFP Bid Progression.

10/9/2002	Exhibit MSC-121in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: E-Mail from Snohomish County PUD *No.*1 re the phone list with an update on addresses.
10/9/2002	Exhibit MSC-123 in Nevada Power Co and Sierra Pacific Gas Power Co's proceeding under EL02-28 *et al.*: January 20th RFP Bid Summary.
10/9/2002	Exhibit MSC-124 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Assumptions- Water Scenario for 2002-2005.
10/9/2002	Exhibit MSC-125 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:January 2001 Rate Increase.
10/9/2002	Exhibit MSC-127 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: International Swaps and Derivatives Association, Inc's Form of Credit Support Annex re Salomon Brothers Holdings Co Inc *et al.*
10/9/2002	Exhibit MSC-128 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response to Question MSC-SNO-89.

10/9/2002	Exhibit MSC-129 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Amendment to irrevocable standby credit number:3042218.
10/9/2002	Exhibit MSC-130 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:American Electric Power Offer for Snohomish County PUD 1 RFP dated 12/22/00.
10/9/2002	Exhibit MSC-131 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated 10/18/00 to Snohomish County PUD *No.*1 re Creditworthiness Agreement with Continuing Credit Review by BPA.
10/9/2002	Exhibit MSC-124 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: SNOPUD News Article on Financial Statements- Accounting for good work.
10/9/2002	Exhibit SNO-4 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct Testimony of Karin A. Bulova on behalf of Public Utility District 1.
10/9/2002	Exhibit SNO-5 in Nevada Power Co & Sierra Pacific Power Co's proceeding

under EL02-28 *et al.*: Power Supply Request for Proposals dated 12/22/00 for the Snohomish County PUD 1.

10/9/2002 Exhibit SNO-6 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confirmation Agreement between Morgan Stanley Capital Group, Inc & Public Utility District 1 of Snohomish County.

10/9/2002 Exhibit SNO-7 in Nevada Power Company & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Mid C Daily Spot Price.

10/9/2002 Exhibit SNO-8 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: General Information from 01/98 through 04/00.

10/9/2002 20030228-0963

Description: Exhibit SNO-9 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Proposal for the Snohomish County Public Utility District 1.

10/9/2002 Exhibit SNO-10 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Amendment 1 to Power Supply Request for Proposals for Snohomish County PUD 1 dated 12/22/00.

10/9/2002 Exhibit SNO-11 in Nevada Power Co

& Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/9/2002 Exhibit SNO-13 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Tape 3 conservation between Kamal Hamdam & Karin Bulovra.

10/9/2002 Exhibit SNO-15 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Market sales vs Long-Term contracts from January 2001-March 2002.

10/9/2002 Exhibit SNO-16 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL00-28 *et al.*:Potential Rate Increase Report

10/9/2002 Exhibit SNO-23 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct testimony of James L Herrling on behalf of Public Utility District 1 of Snohomish County, Washington.

10/9/2002 Exhibit SNO-24 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Email Memo dated 1/23/02 re S&P Request for Credit Trigger Contracts

10/9/2002 Exhibit SNO-25 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

Chart. containing Privileged Information- Do Not Release.

10/9/2002 Exhibit SNO-26 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Comments of Pamela F & Leslie G Finnely dated 3/7/02.

10/9/2002 Exhibit SNO-38 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*:Market Sales v Long term contracts during January 2001 - March 2002.

10/9/2002 Exhibit SNO-39 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/9/2002 Exhibit SNO-40 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Rebuttal Testimony of James L Herrling on behalf of Public Utility District 1 of Snohomish County, Washington.

10/9/2002 Exhibit SNO-416 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Total Disconnects Year to Date.

10/9/2002 Exhibit SNO-42 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28:Protected

Materials.

10/9/2002 Exhibit SNO-43 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Email between Public Utility District 1 of Snohomish County, Washington & Bank of America.

10/9/2002 Exhibit SNO-97 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Transcript of a deposition of John AC Woodley.

10/9/2002 Exhibit SNO-98 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: (Blotted out)Telephone Call Report dated 1/26/01.

10/9/2002 Exhibit SNO-99 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: SNO-MSCG-294 Power Meter-Power Update report.

10/9/2002 Exhibit MSC-10 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Morgan Stanley Capital Group submits proposal to Public Utility District 1 of Snohomish County, Washington.

10/9/2002 Exhibit MSC-78 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Prepared answering testimony of Simon T W Greenshileds on behalf of Morgan Stanley Capital Group, Inc.

10/9/2002 Exhibit MSC-79 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Email re Power Supply RFP Questions.

10/9/2002 Exhibit MSC-80 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Email of Karin Bulova concerning revised pricing re PUD *No.* 1 of Snohomish County, Washington & Enron Power Marketing Inc.

10/9/2002 Exhibit MSC-81 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Affidavit of Karin A Bulova in support of reply of Public Utility District 1 of Snohomish County, Washington etc.

10/9/2002 Exhibit MSC-96 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Email discussing Special Meeting re Long-tem Contract Collateral Requirements.

10/9/2002 Exhibit MSC-12 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: General information.

10/9/2002	Exhibit MSC-13 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Email of Karin Bulova discussing refreshed prices.
10/9/2002	Exhibit MSC-14 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Email of Karin Bulova re-pricing.
10/9/2002	Exhibit MSC-15 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Snohomish County PUD Power Supply Request for Proposals -- Amendment 1.
10/9/2002	Exhibit MSC-16 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Audio Cassette Tapes of Kamal Hamdan.
10/9/2002	Exhibit SNO-77 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Email of Karin Bulova discussing Snohomish County PUD Power Supply Request for Proposals Amendment 1.
10/9/2002	Exhibit MSC-18 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Letter dated 1/25/01.

10/9/2002 Exhibit MSC-56 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Margin Agreement with Western Systems Power Pool.

10/10/2002 Order adopting complainant's proposed stipulation of issues re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

10/10/2002 Transcript of the 10/10/02 hearing in Washington, DC re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading & Marketing, LLC etc under EL02-26 *et al.* Volume 22, Pp 1987-2387.

10/10/2002 Exhibit ALL-46 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter from Merrill Lynch discussing the agreement to purchase to Capitol Services, Inc's Global Energy Markets business.

10/10/2002 Exhibit AEP-7 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Seller, Transaction date, ID Code, Price, Term & Quantity.

10/10/2002 Exhibit MAEM-63 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

al.:Response to information Request *No.*MAEM NPC 2-18.

10/10/2002 Exhibit MAEM-64 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Nevada Power Company's response to Information Request MAEM NPC 6-01.

10/10/2002 Exhibit RES-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to Information Request *No.*RES NPC 37.

10/10/2002 Exhibit MSC-134 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confidential Deposition of Jonathan Perry re Duke Energy Trading and Marketing, LLC *et al.* v Morgan Stanley Capital Group *et al.*

10/10/2002 Exhibit MSC-136 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confidential deposition of Jonathan Perry dated August 5, 2002.

10/10/2002 Exhibit SNO-37 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28:Protected Materials.

10/10/2002 Exhibit SNO-53 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Rebuttal Testimony of John P White on behalf of PUD 1 of Snohomish County, Washington *et al.*

10/10/2002 Exhibit SNO-54 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Rebuttal Testimony of Robin G. Adams Experience of Resource Strategies in the Electricity Sector.

10/10/2002 Exhibit SNO-55 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Statement of career experience of Robin Adams.

10/10/2002 Exhibit SNO-56 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Rebuttal Testimony of Robin G Adams.

10/10/2002 Exhibit SNO-57 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Extract from MSCG Telephone Log between Kamal Hamdan & Anthony Lupiano.

10/10/2002 Exhibit SNO-59 in Nevada Power Co & Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Resume of Timothy D. Mount.

10/10/2002 Exhibit SNO-76 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/10/2002 Exhibit SNO-77 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/10/2002 Exhibit SNO-77 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Regional Sources of Price Discovery Map.

10/12/2002 Exhibit SNO-103 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Documents Reviewed by Kemp.

10/14/2002 Exhibit NPC-51 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Rebuttal Testimony of Jonathan P Perry.

10/15/2002 Answer of Morgan Stanley Capital Group Inc. to Request for Rehearing under EL02-28

10/15/2002 Errata notice of Nevada Power Co *et al.* re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

10/15/2002 Transcript of 10/15/02 hearing in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.* Volume 23, Pp 2388 - 2727.

10/15/2002 Exhibit ALL-19 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Petition for judicial review of an order of the Public Utilities Commission of Nevada etc.

10/15/2002 Exhibit MAEM-66 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response of Nevada Power Co to information request *No.* MAEM NPC 2-06.

10/15/2002 Exhibit MAEM-67 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Co's Responses to Information Request MAEM NPC 2-07.

10/15/2002 Exhibit NEV-1 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL00-28 *et al.*: Prepared Direct Testimony of Jonathan P. Perry.

10/15/2002 Exhibit NEV-2 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Statement of

qualifications of Jonathan P Perry.

10/15/2002 Exhibit NEV-3 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confirmation page dated 5/24/01.

10/15/2002 Exhibit NEV-4 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL00-28 *et al.*: Prepared Rebuttal Testimony of Dennis D. Schiffel.

10/15/2002 Exhibit RES-4 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Reliant Energy Services Inc's letter dated 4/3/02 re Written Request for Performance Assurance.

10/15/2002 Exhibit RES-5 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*:Letter dated 5/3/02 from Reliant Resources re notice of early termination etc.

10/15/2002 Exhibit CES-17 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Review Journal of Nevada Power:Rate cuts possible.

10/15/2002 Exhibit CES-18 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

al.:Protected Materials.

10/15/2002 Exhibit CES-19 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/15/2002 Exhibit CES-20 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/15/2002 Exhibit CES-21 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/15/2002 Exhibit CES-22 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Email dated 10/11/02 re Calpine Master Amendment.

10/15/2002 Exhibit CES-23 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to information request: Calpine *No.*NPC 2-22.

10/15/2002 Exhibit CES-24 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Response of Nevada Power Co to information request of Calpine NPC 2-29.

10/15/2002 Exhibit CES-25 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to information request: Calpine NPC 2-32.

10/15/2002 Exhibit CES-26 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to information request RES NPC 31.

10/15/2002 Exhibit CES-27 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to information request: MSC NPC 72.

10/15/2002 Exhibit CES-28 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to information request MSC NPC 74.

10/15/2002 Exhibit CES-29 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to information request: MSC NPC 79.

10/15/2002 Exhibit CES-31 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Minutes for the PLR Energy Risk Management Exposure Management

	Committee Meeting on 8/16/00.
10/15/2002	Exhibit CES-32 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to information request AEP- NPC- 2.
10/15/2002	Exhibit CES-33 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Comprehensive energy plan proposal to assure a reliable energy supply at a reasonable cost for the citizens of the State of Nevada.
10/15/2002	Exhibit CES-34 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:minutes for the PLR Energy Risk Management Exposure Management Committee dated 6/6/01.
10/15/2002	Exhibit CES-35 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to information request AEP-NPC-2.
10/15/2002	Exhibit CES-36 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Public Utilities Commission of Nevada's application of Nevada Power Co pursuant to A.B. etc.

10/15/2002 Exhibit CES-37 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's response to information request Indicated Respondents 1-67 Supplement 1 & 2.

10/15/2002 Exhibit CES-38 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Company's Response to Information Request EPME NPC 1-58.

10/15/2002 Exhibit CES-39 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Duke - NPC.

10/15/2002 Exhibit MSC-137 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Sierra Pacific Power Co's responses to Information Request FERC SPPC 06 dated 6/24/02.

10/15/2002 Exhibit MSC-138 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co response to information request, MSC-NPC-17.

10/15/2002 Exhibit MSC-139 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co response to

Information Request *No.* MSC-NPC-18.

10/15/2002 Exhibit MSC-140 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Co's responses to Information Request, MSC-NPC-19 dated 6/18/02.

10/15/2002 Exhibit MSC-141 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Co's responses to Information Request MSC-NPC-20 dated 6/18/02.

10/15/2002 Exhibit MSC-142 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co response to Information Request *No.*MSC-NPC-43.

10/15/2002 Exhibit MSC-143 in Nevada Power Co and Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Nevada Power Company's Response to Information Request, MSC-NPC-45 dated 06/18/02.

10/15/2002 Exhibit MSC-144 in Nevada Power Co and Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Nevada Power Company's Response to Information Request, MSC NPC 71.

10/15/2002 Exhibit MSC-145 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Co's responses to Information Request MSC-NPC-72 dated 9/19/02

10/15/2002 Exhibit MSC-146 in Nevada Power Co and Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Nevada Power Company's Response to Information Request, MSC-NPC-74 dated 09/19/02.

10/15/2002 Exhibit MSC-147 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co response to information Request *No.*MSC NPC 79.

10/15/2002 Exhibit MSC-148 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Co's response to Information Request Calpine NPC 2-03 dated 7/25/02.

10/15/2002 Exhibit MSC-149 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Co's response to Information Request, FERC NPC 21.

10/15/2002 Exhibit MSC-150 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

	al.:Nevada Power Co response to information Request *No.*Calpine NPC 2-02.
10/15/2002	Exhibit MSC-151 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Deposition of William Kemp dated 07/24/02.
10/15/2002	Exhibit MSC-153 in Nevada Power Company and Sierra Pacific Power Company's proceeding under EL02-28 *et al.*:Question & response to MSC-SNO-284.
10/15/2002	Exhibit MSC-154 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response to Question MSC-SNO-287
10/15/2002	Exhibit MSC-155 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co response to information request *No.*01-11029, dated 2/15/02.
10/15/2002	Exhibit MSC-156 in Nevada Power Co & Sierra Pacific Power Co' s proceeding under EL02-28 *et al.*: Deposition of Jim R. Joyce.
10/15/2002	Exhibit MSC-157 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et*

al.:Sierra Pacific Resources Provider of Last Report Energy Risk Management Policy Manual.

10/15/2002 Exhibit NPC-1 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct Testimony of Michael R Smart.

10/15/2002 Exhibit NPC-4 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct Testimony of Dennis E Peseau on behalf of The Southern Nevada Water Authority and the Las Vegas Valley Water District.

10/15/2002 Exhibit NPC-5 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Newspaper Article concerning the Power Blackouts could spill out of California this summer.

10/15/2002 Exhibit NPC-6 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:2001 Summer Special Assessment Report regarding the reliability of the Bulk Electric Supply in North America.

10/15/2002 Exhibit NPC-7 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Public Utilities Commission of Nevada's findings of fact and conclusions of law.

10/15/2002 Exhibit NPC-8 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Direct Testimony of Dennis D Schiffel.

10/15/2002 Exhibit NPC-9 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Statement of Qualifications of Dennis D Schiffel.

10/15/2002 Exhibit NPC-10 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct testimony of Jonathan P Perry.

10/15/2002 Exhibit NPC-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Statement of Qualifications of Jonathan P Perry.

10/15/2002 Exhibit NPC-12 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Buy/Sell Report of Allegheny -NPC.

10/15/2002 Exhibit NPC-13 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Transaction Confirmation re WSPP Agreement with Merrill Lynch Capital Services, Inc dated 12/04/00.

10/15/2002 Exhibit NPC-14 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

Western Systems Power Pool Agreement.

10/15/2002 Exhibit NPC-15 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Price comparison before & after June 20, 2001 price mitigation.

10/15/2002 Exhibit NPC-16 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter stating that Allegheny Energy Supply Co, LLC has agreed to purchase Merrill Lynch Capital Services Inc's Global Energy Market etc.

10/15/2002 Exhibit NPC-17 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co Energy Accounting & Transaction Management January 2002.

10/15/2002 Exhibit NPC-18 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:TFS Energy Electricity West report of Bid & Offer.

10/15/2002 Exhibit NPC-47 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Prepared rebuttal testimony of Dennis D Schiffel.

10/15/2002 Exhibit NPC-52 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: News Article from the Washington Post re drought conditions in California.

10/15/2002 Exhibit NPC-53 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared rebuttal testimony of James R Joyce.

10/15/2002 Exhibit NPC-54 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confidential Deposition of Michael R Smart. Hold for Original.

10/15/2002 Exhibit SNO-27 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct Testimony of William J Kemp on behalf of Public Utility District 1 of Snohomish County, Washington.

10/15/2002 Exhibit SNO-28 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: PJM Interconnection Credit Policy.

10/15/2002 Exhibit SNO-29 in Nevada Power Co & Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Credit Worthiness Agreement with continuing Credit Review by BPA..

10/15/2002	Exhibit SNO-30 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Global Power North America New Issues re Snohomish County Public Utility District 1.
10/15/2002	Exhibit SNO-31in San Diego Gas & Electric Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Direct Testimony of Drew C Coleman on behalf of Snohomish County Public Utility District 1.
10/15/2002	Exhibit SNO-32 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct Testimony of Jack Heath on behalf of Public Utility District 1 of Snohomish County, Washington.
10/15/2002	Exhibit SNO-33 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Testimony of Gary L Jefferis on behalf of Public Utility District 1 of Snohomish County, Washington.
10/15/2002	Exhibit SNO-34 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Testimony of Linda Harris on behalf of Public Utility District 1 of Snohomish County, Washington.
10/15/2002	Exhibit SNO-35 of Nevada Power Co

and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Direct Testimony of Robert Eustice on behalf of Public Utility District 1 of Snohomish County, Washington.

10/15/2002 Exhibit SNO-74 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confidential deposition of Howard W Pifer, III.

10/15/2002 Exhibit SNO-77 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Deposition of John A C Woodley.

10/15/2002 Exhibit SNO-78 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Desposition of John A C Woodley.

10/15/2002 Exhibit SNO-80 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Post Winter Electricity Review of the Office of the Minister of Energy.

10/15/2002 Exhibit SNO-81 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Hedge Markets for Electric Power in New Zealand, A Report to the Ministry of Economic Development.

10/15/2002 Exhibit SNO-82 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*:1991 Power Plan Chart.

10/15/2002 Exhibit SNO-83 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/15/2002 Exhibit SNO-84 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Response to Question SNO-SMSCG-246.

10/15/2002 Exhibit SNO-87 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Deposition of Simon T W Greenshields.

10/15/2002 Exhibit SNO-88 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/15/2002 Exhibit SNO-89 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Condensed transcript & concordance.

10/15/2002 Exhibit SNO-90 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/15/2002 Exhibit SNO-92 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Desposition of Robert J Mackay.

10/15/2002 Exhibit SNO-93 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Morgan Stanley submits market guide/ provestor plus company report.

10/15/2002 Exhibit SNO-94 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Deposition of Simon T W Greenshields.

10/15/2002 Exhibit SNO-95 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Simon T W Greenshields.

10/15/2002 Exhibit SNO-101 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of William J Kemp.

10/15/2002 Exhibit SNO-102 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Publications and Presentations of William J Kemp.

10/16/2002 Motion of Public Utility District 1 of Snohomish County, Washington for

permission to take an interlocutory appeal under EL02-28 *et al.*

10/16/2002 Exhibit BP-4 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Order instituting proceeding pursuant to Section 6 & of the Commodity Exchange Act making finding & imposing remedial sanctions.

10/16/2002 Exhibit BP-5 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Manipulation of Power Markets.

10/16/2002 Exhibit AEP-1 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Prepared Direct Testimony & Summary of William C. Reed on behalf of American Electric Power Service Corporation.

10/16/2002 Exhibit AEP-2 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Seller/Buyer Report.

10/16/2002 Exhibit AEP-3 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confirmation notice of TFS Energy, LLC of buyer & seller transactions.

10/16/2002 Exhibit AEP-4 in Nevada Power Co & Sierra Pacific Power Co's proceeding

under EL02-28 *et al.*:Summary of the prepared direct testimony of Vishal APTE on behalf of American Electric Power Service Corp.

10/16/2002 Exhibit AEP-5 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Seller/Buyer list.

10/16/2002 Exhibit AEP-6 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated December 1, 2002 from TFS Energy, LLC to American Electric Power Service Co confirming transactions etc.

10/16/2002 Exhibit MAEM-68 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-33 *et al.*: Confidential Testimony & deposition of David X Kolk taken on 8/20/02.

10/16/2002 Exhibit MAEM-69 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response of Southern California Water Co to Question FERC-SCWC 19.

10/16/2002 Exhibit MAEM-71 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL00-28 *et al.*: Objections and Responses of Southern California Water Co MAEM's Seventh Set of Discovery Requests.

10/16/2002 Exhibit MAEM-72 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Objections & responses of Southern California Water Co to MAEM's 7th Set of Discovery Requests dtd 7/30/02., MAEM 7-4.

10/16/2002 Exhibit MAEM-73 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL00-28 *et al.*: Objections and Responses of Southern California Water Co MAEM's Seventh Set of Discovery Requests dated 07/30/02.

10/16/2002 Exhibit MAEM-74 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL00-28 *et al.*: Objections and Responses of Southern California Water Co MAEM's Seventh Set of Discovery Requests 07/30/02.

10/16/2002 Exhibit MAEM-75 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Objections & responses of Southern California Water Co MAEM's Seventh Set of Discovery Requests on 7/30/02.

10/16/2002 Exhibit MAEM-76 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Objections & responses of Southern

10/16/2002	Exhibit MAEM-70 in Nevada Power Co & Sierra Pacific Power Co proceeding under EL02-28 *et al.*:Protected Materials.
10/16/2002	Exhibit EPMI-34 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Company's Response to Information Request Enron NPC 1-36.
10/16/2002	Exhibit EPME-39 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Richard E Goldberg re Duke Energy Trading & Marketing LLC *et al.* v Morgan Stanley Capital Group Inc *et al.*
10/16/2002	Exhibit EPME-40 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: General Information re a telephone call on May 22, 2001.
10/16/2002	Exhibit S-16 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Byline of Daily Energy, dated 11/13/00.
10/16/2002	Exhibit SCW-1 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Summary of Prepared testimony of Joel A Dickson.

10/16/2002	Exhibit SCW-2 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Resume of Joel A Dickson.
10/16/2002	Exhibit SCW-3 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Bear Valley Support Cost Comparison of Edison v Actual.
10/16/2002	Exhibit SCW-4 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Complete Energy Service, Inc's 4/30/01 report.
10/16/2002	Exhibit SCW-5 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Chart A-BVES Hourly Load for Year 2000 & Chart B-Interruptible Contribution to BVES Peak Load.
10/16/2002	Exhibit SCW-6 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Bear Valley Electric Historical Summary of typical customer monthly bills for the year 1991 through 2001.
10/16/2002	Exhibit SCW-7 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Mirant Americas Energy Marketing, LP Transaction Confirmation.

10/16/2002 Exhibit SCW-8 in Nevada Power Company & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Comparison of Mirant contract prices to expected spot market prices for five-years & seven-years.

10/16/2002 Exhibit SCW-10 in Nevada Power Company's proceeding under EL02-28: Summary of Prepared Direct Testimony of Gordon TC Taylor.

10/16/2002 Exhibit SCW-11 in Nevada Power Company's proceeding under EL02-28: Rebuttal Testimony of Joel A Dickson.

10/16/2002 SCW-12 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Letter dated 7/01/02 re Mirant Americas Energy Marketing's supplemental response to Question SCWC 4-1.

10/16/2002 Exhibit SCW-13 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28: Staff Recommendations on Prospective Market Monitoring and Mitigation for the California Wholesale Electric Power Markets.

10/16/2002 Exhibit SCW-14 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's Supplemental

Response to Request SCWC 1-14.

10/16/2002 Exhibit SCW-15 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 Response denied by Robert Schaefer to Question: SCWC 5-11.

10/16/2002 Exhibit SCW-16 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-26: Response to Question SCWC 9-11.

10/16/2002 Exhibit SCW-17 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.* : Mirant Americas Energy Marketing LP Confirmation Agreement with California Department of Water Resources.

10/16/2002 Exhibit SCW-18 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Deposition of Robert Schaefer dated 8/28/02

10/16/2002 Exhibit SCW-19 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Nevada Power Co's Response to Question SCWC 1-14.

10/16/2002 Exhibit SCW-20 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Prepared rebuttal testimony &

summary of Gordon TC Taylor, PhD.

10/16/2002 Exhibit EPME-19 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Direct Testimony of William H Hieronymus.

10/16/2002 Exhibit SCW-22 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Corrections to the direct testimony & rebuttal testimony of Gordon TC Taylor, PhD.

10/16/2002 Exhibit NPC-3 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct testimony of Professor Dale Stransky on behalf of Office of Attorney General Bureau of Consumer Protection.

10/16/2002 Exhibit NPC-19 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Direct testimony of Professor Willian G Shepherd.

10/16/2002 Exhibit NPC-20 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Resume of William Shephard.

10/16/2002 Exhibit NPC-21 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:An

Analysis of the June 2000 price spikes in the California Energy & Ancillary Services Markets.

10/16/2002 Exhibit NPC-22 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Figure & Workpapers for WGS Testimony.

10/16/2002 Exhibit NPC-40 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Prepared rebuttal testimony of William G Sheperd & Richard E Goldberg.

10/16/2002 Exhibit NPC-41 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of Richared E Goldberg.

10/16/2002 Exhibit NPC-42 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Exhibt REG-2, Price& Expected future spot prices

10/16/2002 Exhibit NPC-48 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared rebuttal testimony of Steven C Oldham.

10/16/2002 Exhibit NPC-61 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

Rebuttal Testimony of Richard J Pierce, Jr.

10/16/2002 Exhibit NPC-62 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of Richard J Pierce, Jr.

10/16/2002 Exhibit NPC-63 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Application of Merill Lynch Capital Services, Inc for authorization to sell and assign jurisdictional facilities etc.

10/16/2002 Exhibit NPC-64 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Merrill Lynch Capital Services, Inc's amendment to its application.

10/16/2002 Exhibit NPC-65 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Affidavit of Charles M Hunter.

10/17/2002 Transcript of 10/17/02 Hearing held in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading Power Co *et al.* under EL02-26 *et al.* Volume 25, pages 2996-3283.

10/17/2002 Transcript of 10/17/02 hearing in Washington DC re Nevada Power Co & Sierra Pacific Power Co *et al.* v Duke Energy Trading & Marketing, LLC *et al.* under EL02-26 *et al.*

Volume 25, Pp 2996-3283.

10/17/2002 Exhibit BCP-1 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-33 *et al.*: Prepared direct testimony of Paul Premo on behalf of BP Energy Co.

10/17/2002 Exhibit BP-2 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Supplement to Paul Premo's Curriculum Vitae expert Witness Testimony & Professional presentations.

10/17/2002 Exhibit ALL-12 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Protected Materials.

10/17/2002 Exhibit ALL-12 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Direct testimony of William Brewer in behalf of Allegheny Energy Supply Co, LLC.

10/17/2002 Exhibit ALL-13 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Protected Materials.

10/17/2002 Exhibit ALL-13 Redacted in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28

et al.: General Information.

10/17/2002 Exhibit ALL-46 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:TFS Energy Electricity West bid & offer report.

10/17/2002 Exhibit ALL-15 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:TFS Energy Electricity West's Bid/Offer Report.

10/17/2002 Exhibit ALL-17 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Direct testimony of Yair Yaish on behalf of Alleghency Energy Supply Co, LLC.

10/17/2002 Exhibit ALL-20 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Confidential desposition of Charles M Hunter dated 8/02/02 etc.

10/17/2002 Exhibit MAEM-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Memo regarding bid offer between Southern Califronia Water Co & Mirant California, LLC.

10/17/2002 Exhibit MAEM-12 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

	al.:Memo discussing the SC services for SCWC.
10/17/2002	Exhibit EPMI-22 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Direct testimony of Todd W Filsinger.
10/17/2002	Exhibit EPMI-23 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Filsinger Direct Testimony, Monthly California Generation Outages
10/17/2002	Exhibit EPMI-24 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Direct testimony of Todd Filsinger, Pacific Northwest Precipitation.
10/17/2002	Exhibit EPMI-25 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Pacific Northwest Runoff for January-July.
10/17/2002	Exhibit EPMI-26 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Filsinger Direct Testimony, Variation in Hydroelectric Generation in the Pacific Northwest.
10/17/2002	Exhibit EPMI-27 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

al.:California Energy Net Imports from the Pacific Northwest.

10/17/2002 Exhibit EPMI-28 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Filsinger Direct Testimony, Historical California NOx Prices.

10/17/2002 Exhibit EPMI-29 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Direct testimony of Filsinger, Fuel mix in California in 2000.

10/17/2002 Exhibit EPMI-30 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Filsinger Direct Testimony, & Graph of Natural Gas Daily Spot Prices.

10/17/2002 Exhibit EPMI-31 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Hydroelectric Generation in Pacific Northwest.

10/17/2002 Exhibit EPMI-32 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Filsinger Direct Testimony, Alternative Delivered California Natural Gas Fuel Prices.

10/17/2002 Exhibit EPMI-33 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

	al.:Prepared direct testimony of Todd Filsinger, Graph of estimated impact of fundamental factors.
10/17/2002	Exhibit EPME-22 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Prepared direct testimony of Dennis Price of El Paso Merchant Energy, LP.
10/17/2002	Exhibit CES-1 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Prepared Direct Testimony of Paul Posoli on behalf of Calpine Energy Services, LP.
10/17/2002	Exhibit CES-2 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Answering Testimony of Terrence Page on behalf of Calpine Energy Services, LP, El Paso Merchant Energy, LP *et al.*
10/17/2002	Description: Exhibit CES-3 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Terrence Page's Qualifications.
10/17/2002	Exhibit CES-4 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Order of the Public Utilities Commission of Nevada re the

application of Nevada Power Co to establish Deferred Energy Accounting etc.

10/17/2002 Exhibit CES-5 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Public Utillities Commission of Nevada's Order re application of Sierra Pacific Power Co for authority to increase its annual revenue etc.

10/17/2002 Exhibit CES-6 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Company Response to Information Request 1-67.

10/17/2002 Exhibit CES-7 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Minutes for the PLR Energy Risk Management Exposure Managment Committee Meeting held on 08/16/2000.

10/17/2002 Exhibit CES-8 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Company's Response to Information Request 1-67.

10/17/2002 Exhibit CES-9 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Nevada Power Company's Response

to Information Request NPC 1-74 .

10/17/2002 Exhibit CES-10 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: 1st Qtr 2001 Earnings Report.

10/17/2002 Exhibit CES-11 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Transcript of Proceedings Hearing, Volume 17A, dated 3/11/02.

10/17/2002 Exhibit CES-12 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Nevada Power Co response to information request.

10/17/2002 Exhibit CES-13 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Questions and Answers of Pp 3236-3339.

10/17/2002 Exhibit CES-14A in Nevada Power Company & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Transcript of 8/08/02 confidential deposition of Charles M Hunter etc.

10/17/2002 Exhibit CES-14B in Nevada Power Company & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confidential Disposition of Jim R Joyce.

10/17/2002 Exhibit CES-14C in Nevada Power Company & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confidential Deposition of Steven C Oldham.

10/17/2002 Exhibit CES-14D in Nevada Power Company & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confidential Deposition of Jonathan Perry, dated 8/5/02.

10/17/2002 Exhibit CES-14E in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Dennis D. Schiffel, dated 08/07/2002.

10/17/2002 Exhibit CES-14F in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confidential deposition of Michael R Smart dated 8/08/02 etc. Volume 2.

10/17/2002 Exhibit CES-15 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co kwh sales billed & unbilled for March 2001 through September 2001.

10/17/2002 Exhibit NPC-44 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of David L Toof.

10/17/2002	Exhibit NPC-46 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: An issue of The Wall Street Journal dated 8/14/02 re Regulators Report Evidence of possible manipulations by three energy companies
10/17/2002	Exhibit NPC-49 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Statement of Qualifications of Steven C Oldham.
10/17/2002	Exhibit NPC-50 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Reliant Energy's Wholesale Energy Buisnesses and Electric Operations Report for the Year 2000.
10/17/2002	Exhibit NPC-55 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Rebuttal Testimony of James J White.
10/17/2002	Exhibit NPC-56 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of James J White.
10/17/2002	Exhibit NPC-57 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Asset Contribution and Purchase

	Agreement between Merrill Lynch & Co, Inc *et al.* and Allegheny Energy, Inc *et al.*
10/17/2002	Exhibit NPC-58 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Bill of Sale and Assignment.
10/17/2002	Exhibit NPC-59 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Allegheny Energy, Inc's correspondence with Mreilly Lynch Capital Services, Inc re Asset Contribution & Purchase Agreement.
10/17/2002	Exhibit NPC-60 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Deposition of Charles M Hunter.
10/17/2002	Exhibit NPC-66 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Prepared Rebuttal Testimony of Robert C Means on behalf of Nevada Power Co.
10/17/2002	Exhibit NPC-67 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of Robert C Means.
10/17/2002	Exhibit NPC-80 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

	Allegheny Energy Issues Statement with regard to Lawsuit Filed by Merrill Lynch.
10/17/2002	Exhibit NPC-81 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Allegheny Energy Sues Merrill Lynch for fraud and breach of contract report etc.
10/17/2002	Exhibit NPC-82 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: News Article from the New York Times re Allegheny Energy Sues Merill Lynch.
	Exhibit NPC-83 in Nevada Power Company and Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Washington Post 9/25/02 Publication re Financial, Dell to Sell Own Printers.
10/17/2002	Exhibit NPC-84 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: News Article from the Wall Street Journal re Allegheny Says Merrill Misrepresented Energy Unit.
10/17/2002	Exhibit NPC-85 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: News Article from the Washington Post re Merill Lynch Sued Over

Trading Unit.

10/17/2002 Exhibit NPC-86 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Allegheny, Merrill Lynch Trade Lawsuits On Trading Unit Purchase Report.

10/17/2002 Exhibit NPC-87 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: News Article from the Los AngelesTimes re Power Co Allegheny Energy Inc suing Merrill Lynch & Co.

10/17/2002 Exhibit NPC-88 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: News Article from the The Globe and Mail re Allegheny Energy Sues Merill Lynch.

10/17/2002 Exhibit NPC-90 in Nevada Power Co's & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Letter Agreement between Merrill Lynch Capital Services, Inc and Allegheny Energy Global Markets, LLC.

10/17/2002 Exhibit NPC-91 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Forn 10-K filed by CALPINE Corp on 3/15/01.

10/17/2002 Exhibit NPC-92 in Nevada Power Co's & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/17/2002 Exhibit NPC-93 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Merchant Energy Group's Fueling the Growth Engine Report.

10/18/2002 Transcript of 10/18/02 Hearing held in Washington DC re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.* under EL02-28 *et al.* Volume 26, pages 3284-3548.

10/18/2002 Exhibit ALL-1 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Direct testimony of Daniel Gordon on behalf of Allegheny energy Supply Co, LLC.

10/18/2002 Exhibit ALL-2 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Direct testimony of Robert Sheybani on behalf of Allegheny Energy Supply Co LLC.

10/18/2002 Exhibit ALL-3 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Direct testimony of Locke McMurray on behalf of Allegheny Energy Supply

Co LLC.

10/18/2002 Exhibit ALL-4 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Additional Direct testimony of Locke R McMurray on behalf of Allegheny Energy Supply Co LLC.

10/18/2002 Exhibit ALL-5 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Asset Contribution & Purchase Agreement between Merrill Lynch & Co, Inc & Merrill Lynch Capital Services, Inc *et al.*

10/18/2002 Exhibit ALL-6 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Merrill Lynch net invoice

10/18/2002 Exhibit AEP-6 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Ltr dtd 5/3/02 from Sierra Pacific Resources to Merrill Lynch Capital Services, Inc re the power suppliers of the 110 of Benchmark Prices.

10/18/2002 Exhibit ALL-8 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated April 26, 2002 re the WSPP Agreement Term.

Exhibit ALL-9 in Nevada Power Co &

Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: General Information.

10/18/2002 Exhibit ALL-10 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Intermediation Services Agreement between Merrill Lynch & Co, Inc & Merrill Lynch Capital Services, Inc.

10/18/2002 Exhibit ALL-11 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Transfer & assumption agreement between Merrill Lynch Capital Services Inc & Allegheny Energy Supply Co, LLC

10/18/2002 Exhibit ALL-16 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Direct testimony of Kenneth Blasko on behalf of Allegheny Energy Supply Co, LLC.

10/18/2002 Exhibit MAEM-2 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Summary of prepared direct testimony of Robert Schaeffer.

10/18/2002 Exhibit MAEM-3 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated November 11, 2000 confirming agreement reached on

	November 10, 2000 with Nevada Power Co.
10/18/2002	Exhibit MAEM-4 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Mirant Americas Energy Marketing, LP transaction confirmation.
10/18/2002	Exhibit MAEM-5 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Monthly SP EXC Peak.
10/18/2002	Exhibit MAEM-6 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:PV on Peak.
10/18/2002	Exhibit MAEM-7 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Southern California Hedging Analysis.
10/18/2002	Exhibit MAEM-8 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Letter dated March 7, 2001 from South Carolina Water Co to Mirant providing a copy of its request for proposals for power supply.
10/18/2002	Exhibit MAEM-9 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

	al.:Memo dated 3/12/01 from R Menar to T West re Southern California Water Co's desire for 25MW, 7x24 energy delivery to SP 15 etc.
10/18/2002	Exhibit MAEM-10 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated March 14, 2001 submitting the indicative quote to SCWC for a five year supply.
10/18/2002	Exhibit MAEM-13 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Memo dated 3/27/01 from S Connelly to R Menar discussing SC services for SCWC.
10/18/2002	Exhibit MAEM-12 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Appl of Southern California Water Co for authority to increase rates for electric service in the Bear Valley Electric customer service area.
10/18/2002	Exhibit MAEM-16 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Direct testimony J Stephen Henderson on behalf of Mirant Americas Energy Marketing, LP.
10/18/2002	Exhibit MAEM-17 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

al.:Chapter 1 through: Executive Summary *et al.*

10/18/2002 Exhibit MAEM-18 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Southern California Water Co's rebuttal testimony of Davis X Kolk.

10/18/2002 Exhibit MAEM-19 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Memorandum discussing the preliminary financial analysis of proposals, dated 6/23/00.

10/18/2002

Exhibit MAEM-20 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Southern California Water Co's Memorandum on generation facility.

10/18/2002 Exhibit MAEM-21 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response of Southern California WaterCo to Mirant Americas Energy Marketing LP's Fourth Set Data Requests

10/18/2002 Exhibit MAEM-22 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Memo dated 11/14/00 re 10 MW Financial Instrument.

10/18/2002	Exhibit MAEM-23 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Southern Californua Water Co inter-office memorandum discussing the 4th Quarter 2000 Board of directors Report.
10/18/2002	Exhibit MAEM-24 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Memo discussing 12 MW Contract Extension, dated 10/31/00.
10/18/2002	Exhibit MAEM-25 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Email dated 11/06/00 re Resource Requirements.
10/18/2002	Exhibit MAEM-26 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Responses of Southern California Water Company to Mirant Americas Energy Marketing, LP's First Set of Requests, MAEM 1-61.
10/18/2002	Exhibit MAEM-27 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Responses of Southern California Water Co to Mirant Americas Energy Marketing, LP's Data Request MAEM 1-62.

10/18/2002	Exhibit MAEM-28 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response of Southern California Water Co to Mirants Americas Energy Marketing, LP's Fourth Set of Data Requests, MAEM 4-3.
10/18/2002	Exhibit MAEM-29 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Memo dated March 5, 2001 regarding State Power Supply Deals.
10/18/2002	Exhibit MAEM-30 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Southern California Water Co prepared testimony of Joel A Dickson.
10/18/2002	Exhibit MAEM-31 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:DWR announces additional long-term contracts for power dated 12/10/01.
10/18/2002	Exhibit MAEM-32 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Summary of Indicative Mirant Hedges.
10/18/2002	Exhibit MAEM-33 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Summary of SCWC benchmark

results.

10/18/2002 Exhibit MAEM-34 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Indicative Annual Profit Analysis for SCWC Contract.

10/18/2002 Exhibit MAEM-35 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Southern California Water Co's rebuttal testimony of DR. C K Woo.

10/18/2002 Exhibit MAEM-36 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's 2001 deferred energy case, prefiled direct testimony of Mike Smart.

10/18/2002 Exhibit MAEM-1-37 in Nevada Power Co & Seirra Pacific Power Company's proceeding under EL02-28 *et al.*:Summary of Nevada Power Benchmark Analysis.

10/18/2002 Exhibit MAEM-38 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Answering testimony of Robert Schaefer on behalf of Mirant Americas Energy Marketing, LP.

Exhibit MAEM-40 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

al.:General information.

10/18/2002 Exhibit MAEM-40 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Monthly PV ON Peak Report.

10/18/2002 Exhibit MAEM-41 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated 11/11/00 confirming the agreement reached on 11/10/00 with Southern Company Energy Marketing, LP.

10/18/2002 Exhibit MAEM-42 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Memo to Southern Co Energy Marketing LP dated 12/13/00.

10/18/2002 Exhibit MAEM-43 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Answering testimony of J Stephen Henderson on behalf Mirant Americas Energy Marketing, LP.

10/18/2002 Exhibit MAEM-44 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confidental Material Redacted.

10/18/2002 Exhibit MAEM-45 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

al.:Confidental Material Redacted.

10/18/2002 Exhibit MAEM-46 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Responses of Nevada Power Co & Sierra Power Co to Question 1-33 of El Paso Merchant Energy, LP first set of data requests.

10/18/2002 Exhibit MAEM-47 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confidential Material, Redacted.

10/18/2002 Exhibit MAEM-48 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confidential Material, Redacted.

10/18/2002 Exhibit MAEM-49 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Confidential Material Redacted.

10/18/2002 Exhibit MAEM-65 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response to Data Request *No.*1.

10/18/2002 Exhibit MAEM-77 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Global Credit Research Rating Action, dated 10/10/02.

10/18/2002	Exhibit RES-1 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Prepared direct testimony of Lisa Flowers for Reliant Energy Services, Inc dated 6/28/02.
10/18/2002	Exhibit RES-2 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Reliant Energy Services, Inc's Power Purchase/Sale Transaction Confirmation.
10/18/2002	Exhibit RES-3 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Reliant Energy Services, Inc's Power Purchase/Sale Transaction Confirmation pages.
10/18/2002	Exhibit RES-10 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL00-28 *et al.*: Prepared Rebuttal Testimony of Lisa Flowers for Reliant Energy Services, Inc.
10/18/2002	Exhibit RES-12 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Reliant Energy Services, Inc response to data request 1.
10/18/2002	Exhibit RES-13 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Reliant Energy Services' Response to

Data Request *No.*1 dated 08/16/02.

10/18/2002 Exhibit EMPI-9 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Prepared Direct Testimony of Brandon Wax.

10/18/2002 Exhibit EPMI-10 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response of Nevada Power Co's to information request *No.* Enron NPC 3-02.

10/18/2002 Exhibit EPMI-12 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's Confirmation Agreement with Enron Power Marketing, Inc.

10/18/2002 Exhibit EMPI-13 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Response.

10/18/2002 Exhibit EPMI-14 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated 4/22/02 re request for collateral.

10/18/2002 Exhibit EMPI-15 in Nevada Power Co & Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: ltr dated 4/30/02 from Sierra Pacific

Power Extension Agreement per Section 22.2 of the Western Systems Power Pool Agreement.

10/18/2002 Exhibit EPMI-16 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter from Eron Power Marketing, Inc dated 5/1/02 re notice of default & termination.

10/18/2002 Exhibit EPMI-17 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Prepared Direct Testimony of Edward D. Kee dated 8/27/02.

10/18/2002 Exhibit EPMI-18 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Direct testimony of Edward Kee.

10/18/2002 Exhibit EMPI-19 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: "Enron's Strategies in California and the Benefits of Arbitrage" by Jonathan Falk of NERA, dated 05/28/02.

10/18/2002 Exhibit EPMI-20 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: The Enron Trading Practices: How They Worked Why They Occurred What They Teach Us.

10/18/2002 Exhibit EPMI-21 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Prepared direct testimony of Todd Filsinger, dated 8/27/02.

10/18/2002 Exhibit SCW-23 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Email of Randolph Elliott to Carrie Allen of Mirant discussing the draft stipulation, dated 10/17/02.

10/18/2002 Exhibit SCW-24 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Confidential deposition of Stephen Henderson.

10/18/2002 Exhibit SCW-22 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Response to Question SCWC 10-1.

10/18/2002 Exhibit SCW-26 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Response to Question SCWC 10-4.

10/18/2002 Exhibi tSCW-27 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Response prepared by J Stephen Henderson to Question SCWC-10-16.

10/18/2002 Exhibit EPME-19 in Nevada Power

	Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Response to Question SCWC 14-3.
10/18/2002	Exhibit MSC-158 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Email dated January 26, 2001 to Ed Zabrocki concerning the Draft Collateral Annex.
10/18/2002	Exhibit MSC-159 in Nevada Power Co & Sierra Pacific Gas Power Co's proceeding under EL02-28 *et al.*: Deposition of Eric Christensen re Duke Energy Trading & Marketing LLC, etc v Morgan Stanley Capital Group.
10/18/2002	Exhibit NPC-2 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Statement of qualifcations of Michael R Smart.
10/18/2002	Exhibit NPC-94 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Supplemental Response to Data Request 5.
10/18/2002	Exhibit NPC-95 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Response to Data Request 25.

10/18/2002	Exhibit NPC-96 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response to Data Request 53.
10/18/2002	Exhibit NPC-97 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Declaration of Brandon Wax.
10/18/2002	Exhibit NPC-98 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Daniel Gordon. Part 1 of 2.
10/18/2002	Exhibit NPC-98 in Nevada Power Co's & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Daniel Gordon. Part 2 of 2.
10/18/2002	Exhibit NPC-99 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Robert Sheybani.
10/18/2002	Exhibit TAC-1 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Article from Wall Street Journal.
10/18/2002	Exhibit TAC-2 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Handwritten diagram with notes.

10/18/2002 Exhibit TAC-3 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Black Widow Enpower.

10/18/2002 Exhibit TAC-4 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Memo re Annulty's & Big Foot.

Exhibit TAC-5 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Memo discussing Project Red Congo.

10/18/2002 Exhibit TAC-6 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Initial Report on Company-Specific Separate Proceedings & Generic Reevaluations; Published Natural Gas Price Data; etc.

10/18/2002 Exhibit TAC-7 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Court Information.

10/18/2002 Exhibit TAC-8 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Article from Wall Street Journal.

10/19/2002 Exhibit NPC-43 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Rebuttal Testimony of

David I Toof.

10/19/2002 Exhibit NPC-45 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: State Officials Pan FERC's California Fix-it Proposal, Volume 28, Number 214.

10/20/2002 Exhibit SNO-104 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Kamal Hamdan.

10/21/2002 Order postponing hearing until 10/22/02 re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

10/22/2002 Morgan Stanley Capital Group Inc submits the Revised Prepaped Answering Testimony of Robert J Mackay, Ph.D (submitted as Exhibit MSC-94) under EL02-28.

10/22/2002 Transcript of 10/22/02 hearing in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-28 *et al.* Volume 27, Pp 3549-3852

10/22/2002 Exhibit MAEM-1 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Summary of prepared direct testimony of Joesph M Perillo.

10/22/2002	Exhibit MAEM-50 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Answering testimony of William H Hieronymus on behalf of Mirant Americas Energy Marketing, LP.
10/22/2002	Exhibit MAEM-51 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Resume of William H Hieronymus.
10/22/2002	Exhibit MAEM-52 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL00-28 *et al.*: Deposition of Robert McCullough.
10/22/2002	Exhibit MAEM-53 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL00-28 *et al.*: Nevada Power Company Responses to Mirant Americas Energy Marketing, LP's First Set of Data Requests.
	Exhibit MAEM-54 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL00-28 *et al.*: Responses of Nevada Power Company to Third Set of Data Requests and Requests for Admissions of Mirant Americas Marketing.
10/22/2002	Exhibit MAEM-55 in Nevada Power Co & Sierra Pacific Power Company's proceeding under EL02-33 *et al.*: Forward NP-15 Electricity Prices.

10/22/2002	Exhibit MAEM-56 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL00-28 *et al.*: Responses of Nevada Power Company and Sierra Pacific Power Company to Questions 1-33 of etc.
10/22/2002	Exhibit MAEM-57 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Southern California Water Co's supplemental responses to Mirant Americas Energy Marketing, LP's etc.
10/22/2002	Exhibit MAEM-59 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Objections & reponses of Public Utility District 1 of Snohomish County, Washington to the first set data requests etc.
10/22/2002	Exhibit MAEM-78 in Nevada Power Co & Sierra Pacific Power Co proceeding under EL02-28 *et al.*:Joint stipulation of Nevada Power Co & Sierra Pacific Power Co, Mirant Americas Energy Marketing, LP *et al.*
	Exhibit EPME-20 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Prepared Direct Testimony of Thomas F Boland submitted on behalf of El Paso Merchant Energy, LP *et al.*

10/22/2002	Exhibit EPME-21 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Qualifications of Thomas F. Boland.
10/22/2002	Exhibit EPME-41 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:US Electric Utilities-2002-Industry Outlook information.
10/22/2002	Exhibit MSC-160 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Email dated March 6, 2002 dicussing the late-breaking news out of the rate hearing.
10/22/2002	Exhibit MSC-161 in Nevada Power Company and Sieera Pacific Power Company's proceeding under EL02-28 *et al.*:Frequently aked questions on PUD Rates.
10/22/2002	Exhibit MSC-162 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Minutes of Risk management Committee.
10/22/2002	Exhibit MSC-163 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Current Snomonish County Public Utility District Newsmagazine for Spring 2001.

10/22/2002	Exhibit MSC-164 in Nevada Power Co & Sierra Pacific Power Co's proceeding under under EL02-28 *et al.*:Current Snomonish County Public Utility District Newsmagazine.
10/22/2002	Exhibit MSC-165 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Answers to frequently asked question re PUD rate increase effective 10/1/01.
10/22/2002	Exhibit MSC-165 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Response to Question MSC-SNO-11.
10/22/2002	Exhibit NPC-68 in Nevada Power Co's & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Supplemental Response toQuestion SCWC 11-5 *et al.*
10/22/2002	Exhibit NPC-69 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Reform of the California Electricity Market Report.
10/22/2002	Exhibit NPC-70 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Comments on the Congestion Management Proposals of the California ISO.

10/22/2002 Exhibit NPC-71 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: California Electricity Prices and Forward Market Hedging Report.

10/22/2002 Exhibit NPC-73 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:On the Exercise of Market Power Through Stategic Withholding in California.

10/22/2002 Exhibit NPC-74 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Electricity Market Instituitions, Texas and the California Meltdown Report.

10/22/2002 Exhibit NPC-75 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Electricity Market Restructuring, Reforms of Reforms Report.

10/22/2002 Exhibit NPC-76 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Statement of Professor William W Hogan before the Committee Government Affairs, United States Senate.

10/22/2002 Exhibit NPC-77 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Statement of Professor William W Hogan before the Subcommittee on Energy Policy etc.

10/22/2002 Exhibit NPC-78 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: The California Meltdown Report by William W Hogan.

10/22/2002 Exhibit NPC-79 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: California Market Design Breakthrough Report by William W Hogan.

10/22/2002 Exhibit NPC-100 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of Frederick T Baird.

10/22/2002 Exhibit NPC-101 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Errata Sheets to the Deposition of Frederick T Baird.

10/22/2002 Exhibit NPC-102 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Forecast 2002 Peak Load for the WSCC For All Markets Report.

10/22/2002 Exhibit NPC-103 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Response to Data Request, Question Nevada BCP 3.28.

10/22/2002 Exhibit SNO-100 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Electricity market seminar.

10/22/2002 Exhibit MSC-98 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Answering Testimony of Frederick T Baird on behalf of Morgan Stanley Capital Group Inc.

Exhibit MSC-37 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/22/2002 Exhibit MSC-37 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared direct testimony of Frederick T Baird on behalf of Morgan Stanley Capital Group Inc.

10/22/2002 Exhibit MSC-39 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Mid Columbia Peak & Off Peak Spot Price Index for 2000-2001.

10/22/2002 Exhibit MSC-40 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

	Graph- Mid Columbia Peak Spot Price Index for October 2000-June 2001.
10/22/2002	Exhibit MSC-41 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Western Natural Gas Spots Prices .
10/22/2002	Exhibit MSC-42 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Graph- Mid Columbia Peak Spot Price Index for October 2000-June 2001.
10/22/2002	Exhibit MSC-44 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Graph- Mid Cinergy and PJM West Furtures Contracts (August 2001).
10/22/2002	Exhibit MSC-45 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Graph- Henry Hub Natural Futures Prices for Selected Contracts.
10/22/2002	Exhibit MSC-47 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Snohomish Power Scheduling (Trade Ticket Information).
10/22/2002	Exhibit MSC-48 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

Power Scheduling - Trade Ticket.

10/22/2002 Exhibit MSC-49 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Memo re Put Options for 2004-2006.

10/22/2002 Exhibit MSC-50 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: MSCG Contract v Snohomish Forward Curve as of April 2001.

10/22/2002 Exhibit MSC-51 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: 2000 & 2001 Forward Curve Documents (MSC-SNO-11).

10/23/2002 Transcript of 10/23/02 hearing in Washington DC re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-28 *et al.* Volume 28, Pp 3853-4204.

10/23/2002 Exhibit EPME-1 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Prepared direct testimony of Joseph P Kalt on behalf of El Paso Merchant Energy, LP & Calpine Energy Services, LP.

10/23/2002 Exhibit EPME-2 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et*

al.:Resume of Joseph Peggs Kalt.

10/23/2002 Exhibit EPME-3 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Transactions path options in the electricity market.

10/23/2002 Exhibit EPME-4 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Western US Power Trasnmission System.

10/23/2002 Exhibit EPME-5 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Total Monthly Hydroelectric Power generated by Power Stations on the Snake and Columbia Rivers 01/01/90 - 05/31/02.

10/23/2002 Exhibit EPME-6 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Generation Output from use of Fossil Fuels v Water, Western States January 1990 - December 2001.

10/23/2002 Exhibit EPME-7 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Fossil-Fired Steam Generation Output Arizona, California, Nevada, New Mexico, January, 1990 - December, 2001 .

	Exhibit EPME-8 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Snake and Columbia River Hydro-Electric Power Generation as a percent of total Western States Generation.
10/23/2002	Exhibit EPME-9 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Weekly average on-peak daily electricty price at COB & Palo Verde.
10/23/2002	Exhibit EPME-10 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:California utilities' California Power Exchange block forward market compared with deivested megawatts of generation etc.
10/23/2002	Exhibit EPME-12 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Sample of warnings issued by Government Agencies regarding Power Generation Shortages.
10/23/2002	Exhibit EPME-13 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Western US Power Plant Construction Starts 1998:Total Capacity: 480 MW *et al.*

10/23/2002 Exhibit EPME-14 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Cumulative & monthly quantity of New Power Generation plants by construction start date Western US.

10/23/2002 Exhibit EPME-15 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Western US Power Plant Capacity additions currently operating or under construction ind 2001-2003.

10/23/2002 Exhibit EPME-16 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Entities Selling Power to Complainants for 1999-2001 .

10/23/2002 Exhibit EPME-17 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Reported forward transactions compared to contract market prices: Palo Verde.

10/23/2002 Exhibit EPME-19 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co forward purchases from El Paso Palo Verde.

10/23/2002 Exhibit EPME-23 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

	Prepared answering testimony of Joseph P Kalt on behalf of El Paso Merchant Energy, LP *et al.* 8/27/02.
10/23/2002	Exhibit EPME-24 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Comparison of Spot & Forward Price Movements (3rd Quarter 2001: 8/7/00-6/5/01) etc.
10/23/2002	Exhibit EPME-25 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Quarter-long on-peak forward contract price movements 4/1/01 - 6/30/01 Palo Verde.
10/23/2002	Exhibit EPME-26 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Factors relevant to forward contract price declines in the Western US during the Spring and Summer of 2001.
10/23/2002	Exhibit EPME-27 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: A graph showing What Is A Regression?.
10/23/2002	Exhibit EPME-29 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: NYMEX Future v. TFS Forward Prices etc.

10/23/2002 Exhibit EPME-30 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Corrections to Errors in Mr. McCullough's Regression Model .

10/23/2002 Exhibit EPME-31 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Corrections to errors in McCullough's regression model.

10/23/2002 Exhibit EPME-32 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Reports on supply inadequacy in the Western US, from June,1999 through May, 2000.

10/23/2002 Exhibit EPME-33 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: WECC (WSCC) Forecasted v Actual Unavailable Generation Capacity.

10/23/2002 Exhibit EPME-34 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Mr McCullough's reserve margin chart: Original v corrected (with actual data for 2000).

10/23/2002 Exhibit EPME-35 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Duke, Dynegy, Mirant, AES, &

Reliant Generation Plant Monthly Capacity Factors 1997-2001.

10/23/2002 Exhibit EPME-36 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Monthly Capacity Factor by Fuel Type: California v Rest of WECC (WSCC) January 1990 - December 2001.

10/23/2002 Exhibit EPME-37 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Five-Year On-Peak Forward Contracting v Commission Benchmark Palo Verde.

10/23/2002 Exhibit EPME-38 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Reported generation, load, & available resources: Nevada Power Co, July 1999, 2000, 2001, 2002.

10/23/2002 Exhibit MSC-167 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Snohomish Trade MTM as of January 29, 2001.

10/23/2002 Exhibit MSC-168 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Dow Jones Interactive Infor on the California Energy Crisis: Power Crunch Rolls other Western States

etc.

10/23/2002 Exhibit MSC-170 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: fax forwarding at resolution passed by the Snohomish County PUD authorizing General Manager to sign power purchase contract for up to 100 MW.

10/23/2002 Exhibit MSC-171 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Electronic email dated 1/26/01 regarding Attachment "A" additional special provisions - Amendment ot WSPP Agreement.

10/23/2002 Exhibit MSC-172 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: E-mail dated 1/26/01 from E Christensen to E Zabrocki re revised version of Attachment A to the WSPP Amendment etc.

10/23/2002 Exhibit MSC-173 in Nevada Power Co & Sierra Pacific Power Co's proceeding under under EL02-28 *et al.*:Collateral Annex.

10/23/2002 Exhibit NPC-104 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/23/2002 Exhibit SNO-105 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: General Infomation for January 2001.

10/23/2002 Exhibit SNO-106 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Kama Hamdan Telephone calls. Redacted

10/23/2002 Exhibit SNO-107 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Kamal Hamdan-Telephone Calls dated 1/22/01.

10/23/2002 Exhibit SNO-108 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Workpapers of Dr Joseph Kalt.

10/23/2002 Exhibit SNO-26 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Kamal Hamdan-Telephone Calls dated 1/17/01.

10/23/2002 Exhibit SNO-110 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Response to MSCG-79 by Kamal Hamdan.

10/23/2002 Exhibit SNO-111 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Record of the 1/22/01 Telephone Call between Kamal Hamdan and Steve Taylor.

10/23/2002 Exhibit SNO-112 Protected in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/23/2002 Exhibit SNO-113 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/23/2002 Exhibit SNO-114 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Response to Question SNO-MSCG-111.

10/23/2002 Exhibit SNO-115 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Draft Collateral Annex.

10/23/2002 Exhibit SNO-125 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/23/2002 Exhibit SNO-117 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/23/2002 Exhibit SNO-118 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/23/2002 Exhibit SNO-119 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/23/2002 Exhibit SNO-120 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/23/2002 Exhibit SNO-121 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated February 6, 2001 from MorganStanley Capital Group.

10/23/2002 Exhibit SNO-122 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated Febraury 14, 2001 confirming the terms of Morgan Stanley Inc's sale of firm energy to the California Dept of Water Resources.

10/23/2002 Exhibit SNO-123 in Nevada Power Co & Sierra Pacific Power Co under EL02-28 *et al.*: Protected Materials.

10/23/2002 Exhibit MSC-8 in Nevada Power Co & Sierra Pacific Power Co's proceeding

under EL02-28 *et al.*: Prepared Direct Testimony of Kamal S Hamdan on behalf of Morgan Stanley Capital Group Inc.

10/23/2002 Exhibit MSC-9 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Power Supply request for proposals no later than 1/12/01.

10/23/2002 Exhibit MSC-82 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confidential Deposition of John P White.

10/23/2002 Exhibit MSC-87 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Answering Testimony of Edward Zabrocki on behalf of Morgan Stanley Capital Group Inc.

10/23/2002 Exhibit MSC-88 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of James Herrling.

10/23/2002 Exhibit MSC-89 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials

10/23/2002 Exhibit MSC-90 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

Public Utility District 1 of Snohomish County, Washington's objections and responses to data request etc, Question MSC-SNO-91.

10/23/2002 Exhibit MSC-91 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Correspondence from Public Utility District 1 of Snohomish County re collateral call etc.

10/23/2002 Exhibit MSC-92 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/23/2002 Exhibit MSC-93 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared answering testimony of Kamal S Hamdan on behalf of Morgan Stanley Capital Group Inc.

10/23/2002 Exhibit MSC-19 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Email re Margin Agreement -- Draft.

10/23/2002 Exhibit MSC-20 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Configuration Agreement.

10/23/2002 Exhibit MSC-52 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:

Protected Materials.

10/23/2002 Exhibit MSC-53 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/24/2002 Appeal from The Presiding Judge's Denial of the Motion of Public Utility District 1 of Snohomish County, Washington for Permission to take an Interlocutory Appeal re Nevada Power Co *et al.* under EL02-28 *et al.*

10/24/2002 Transcript of 10/24/02 hearing in Washington, DC re Nevada Power Co and Sierra Pacific Power Co v Enron Power Marketing Inc *et al.* under EL02-28 *et al.* Volume 29, Pp 4205-4626.

10/24/2002 Exhibit MAEM-62 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Actual Spot Price.

10/24/2002 Exhibit S-1 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Prepared Direct and Answering Testimony of Howard B. Forman on behalf of FERC.

10/24/2002 Exhibit S-2 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Prepared Direct and Answering Testimony of Commission Staff Witness George M.

Shriver, III.

10/24/2002 Exhibit S-3 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Protected Materials.

10/24/2002 Exhibit S-3 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Objections and Responses to Request FERC-MSCG-20.

10/24/2002 Exhibit S-4 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Prepared Direct and Answering Testimony of Jonathan D. Ogur Witness for the Staff of the FERC.

10/24/2002 Exhibit S-5 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Qualifications of Jonathan D. Ogur.

10/24/2002 Exhibit S-6 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Changes to Natalie Y. Tingle-Stewart's Prepared and Answering Testimony.

10/24/2002 Exhibit S-6 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/24/2002 Exhibit S-7 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Commission staff supporting documents-Nevada Power Co's response to Request NPC 1-16.

10/24/2002 Exhibit S-8 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Nevada Power Co's FERC Form 1, Page 401 for years 1999, 2000 & 2001.

10/24/2002 Exhibit S-9 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Commission Staff supporting documents of Sierra Pacific Power Co's FERC Form 1 Page 401 for years 1999, 2000 & 2001.

10/24/2002 Exhibit S-10 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Nevada Power Co's FERC Form 1, Page 300 & 301 for years 1999, 2000, & 2001.

10/24/2002 Exhibit S-11 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28: Commission Staff Supporting Documents- Sierra Pacific Power Co's Respone to Calpine Energy Services Data Requests *No.*26.

10/24/2002 Exhibit S-12 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Sierra Pacific Power Co FERC Form 1, Page 300 &

301 for years 1999, 2000, & 2001.

10/24/2002 Exhibit S-13 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28: Commission Staff Supporting Documents of Sierra Pacific Power Co's Response to FERC Staff Data Request 7.

10/24/2002 Exhibit S-14 in Nevada Power Co & Sierra Pacific Power Co's procceding under EL02-28 *et al.*:Mirant Americas Energy Marketing, LP's response to FERC Staff Data Request 12.

10/24/2002 Exhibit S-15 of Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/24/2002 Exhibit MSC-133 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Deposition of Robin G Adams.

10/24/2002 Exhibit MSC-174 in Nevada Power Co & Sierra Pacific Power Co's proceeding under under EL02-28 *et al.*:Attachment L - Financial Assurance Policy for NEPOOL Members.

10/24/2002 Exhibit MSC-175 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Substitute Original Sheet 36 to FERC Electric Tariff, Fifth Revised Volume

1.

10/24/2002 Exhibit MSC-176 in Nevada Power Co & Sierra Pacific Power Co's proceeding under under EL02-28 *et al.*:New York Independent System Operator, Inc FERC Electric Tariff, Original Volume 1.

10/24/2002 Exhibit MSC-177 in Nevada Power Company and Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Response to MSC-SNO-75 prepared by Eric Christensen.

10/24/2002 Exhibit MSC-179 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Morgan Stanley Capital Group Inc's amended response to the first set of data requests of Public Utility District 1 of Snohomish County, WA.

10/24/2002 Exhibit MSC-180 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of John White.

10/24/2002 Exhibit MSC-181 in Nevada Power Company and Sierra Pacific Power Company's proceeding under EL02-28 *et al.*:Deposition of Timothy D Mount.

10/24/2002 Exhibit NPC-105 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Energy Markets Report by US

General Accounting Office.

10/24/2002 Exhibit NPC-106 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Depostition of Natalie Tingle-Stewart.

10/24/2002 Exhibit NPC-107 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Commission Trial Staff's responses to the first set of discovery requests of Nevada Power Co, Data Request 5.

10/24/2002 Exhibit NPC-108 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Commission Trial Staff's responses to the First Set of Discovery Requests of Nevada Power Co, Data Request 6.

10/24/2002 Exhibit NPC-109 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Commission Trial Staff's responses to the first set of discovery requests of Nevada Power Co, Data Request 7.

10/24/2002 Exhibit NPC-110 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Commission Trial Staff's responses to the first set of discovery requests of Nevada Power Co, Data Request 15.

10/24/2002 Exhibit NPC-111 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Commission Trial Staff's responses to the first set of discovery requests of Nevada Power Co, Data Request 8.

10/24/2002 Exhibit SNO-124 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/24/2002 Exhibit SNO-125 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response to Question SNO-MSCG-27.

10/24/2002 Exhibit SNO-126 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.

10/24/2002 Exhibit SNO-127 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Email from James McLellan discussing the Snohomish margin call.

10/24/2002 Exhibit SNO-128 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response to Question SNO-MSCG-685.

10/24/2002 Exhibit SNO-77 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Response to Question SNO-MSCG-

10.

10/24/2002	Exhibit SNO-130 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.
10/24/2002	Exhibit MSC-1 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Direct Testimony of Scott M. Harvey and William W. Hogan on behalf of Morgan Stanley Capital Group Inc.
10/24/2002	Exhibit MSC-2 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of Williams W Hogan.
10/24/2002	Exhibit MSC-3 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of Scott M Harvey.
10/24/2002	Exhibit MSC-4 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: List of court documents etc.
10/24/2002	Exhibit MSC-5 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Protected Materials.
10/24/2002	Exhibit MSC-6 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of W

Pifer III.

10/24/2002 Exhibit MSC-7 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.

10/24/2002 Exhibit MSC-62 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Cover Sheet Elections applicable to the Collateral Annex to the Western Systems Power Pool Agreement.

10/24/2002 Exhibit MSC-64 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Comparison of MSCG-Snohomish Collateral Annex with Industry Standards Report.

10/24/2002 Exhibit MSC-65 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Answering Testimony of Scott M Harvey *et al.* on behalf of Morgan Stanley Capital Group Inc *et al.*

10/24/2002 Exhibit MSC-66 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Direct Testimony of J Kent Williams on behalf of El Segundo Power LLC, Long Beach Generation, LLC *et al.*

10/24/2002 Exhibit MSC-67 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Supporting direct testimony of Randall J Hickock on behalf of Duke Energy North America, LLC & Duke Energy Trading & Marketing, LLC.

10/24/2002 Exhibit MSC-68 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared direct testimony of J Kent Williams on behalf of El Segundo Power LLC Long Beach Generation LLC, *et al.*

10/24/2002 Exhibit MSC-69 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Revised prepared direct testimony of Anee M Cleary.

10/24/2002 Exhibit MSC-70 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Direct Testimony of W. Joey Lell for the Reliant Energy Companies.

10/24/2002 Exhibit MSC-71in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Exhibit PAS-1 Prepared responsive testimony of Eric R Klinker on behalf of the City of Pasadena, California.

10/24/2002	Exhibit MSC-72 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Memo re TRaders Strategies in the California Wholesale Power Markets.
10/24/2002	Exhibit MSC-73 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Prepared direct testimony of Dennis M Elliott.
10/24/2002	Exhibit MSC-74 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter dated 01/17/01 to Terry Winter discussing Encina NOx Emmissions.
10/24/2002	Exhibit MSC-75 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: News Article re Public Utilities Fortnightly Price Strike Tsunami: How Market Power Soaked California.
10/24/2002	Exhibit MSC-76 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Responses of Nevada Power Co & Sierra Pacific Power Co to Questions 1 - 33 of El Paso Merchant Energy, LP's first set of data requests.
10/24/2002	Exhibit MSC-77 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Deposition of Robert McCullough.

10/24/2002 Exhibit MSC-83 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Current Public Utility District 1 of Snohomish County, Washington Newsmagazine.

10/24/2002 Exhibit MSC-84 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Current Public Utility District 1 of Snohomish County, Washington Magazine.

10/24/2002 Exhibit MSC-85 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Answering Testimony of Thomas A Funk on behalf of Morgan Stanley Capital Group Inc.

10/24/2002 Exhibit MSC-86 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confidential Deposition of Jonathan Perry.

10/24/2002 Exhibit MSC-94 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Answering Testimony of Robert J Mackay on behalf of Morgan Stanley Capital Group Inc. Jt

10/24/2002	Exhibit MSC-95 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Effect on Collateral Amounts of Using a Discount Factor of 5.09% + 50bp Report.
10/24/2002	Exhibit MSC-97 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Deposition of William Kemp.
10/24/2002	Exhibit MSC-21 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.
10/24/2002	Exhibit MSC-22 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.
10/24/2002	Exhibit MSC-23 in Nevada Power Co & Sierra Pacific Co's proceeding under EL02-28 *et al.*: Protected Materials.
10/24/2002	Exhibit MSC-25 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Letter to Mr Tom Funk of Morgan Stanley Capital Group, Inc confirming transactions.
10/24/2002	Exhibit MSC-26 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Confirmation Agreement.

10/24/2002 Exhibit MSC-27 in Nevada Power Company and Sierra Pacific Power Company's proceeding under EL02-28 *et al.*: Letter dated 5/23/01.

10/24/2002 Exhibit MSC-28 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confirmation Notice between Morgan Stanely Capital Group and Nevada Power on behalf of TFS Energy, LLC.

10/24/2002 Exhibit MSC-29 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confirmation of terms between Morgan Stanely Capital Group and Nevada Power.

10/24/2002 Exhibit MSC-30 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confirmation of terms between Morgan Stanely Capital Group and Nevada Power.

10/24/2002 Exhibit MSC-31 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confirmation of terms between Morgan Stanely Capital Group and Nevada Power.

10/24/2002	Exhibit MSC-30 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confirmation of terms between Morgan Stanely Capital Group and Nevada Power.
10/24/2002	Exhibit MSC-33 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confirmation of terms between Morgan Stanely Capital Group, Inc's Agreement with Nevada Power.
10/24/2002	Exhibit MSC-34 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Confirmation Notice re TFS Enegy, LLC.
10/24/2002	Exhibit MSC-35 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.
10/24/2002	Exhibit MSC-36 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials.
10/24/2002	Exhibit MSC-46 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: January 2001 FRP Bld Summary Report.

10/24/2002	Exhibit MSC-54 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Material.
10/24/2002	Exhibit MSC-57 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Direct Testimony of Robert J. MacKay, Ph.D. on behalf of Morgan Stanley Capital Group Inc. 06/28/02.
10/24/2002	Exhibit MSC-58 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Resume of Robert J Mackay.
10/24/2002	Exhibit MSC-59 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: List of court documents etc.
10/24/2002	Exhibit MSC-60 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Collateral Annex.
10/24/2002	Exhibit MSC-61 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Collateral Annex.
10/24/2002	Exhibit SNO-131 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Protected Materials .

10/24/2002 Exhibit SNO-132 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Power & Gas Traders to Discuss Clearinghouse, Netting Agreements.

10/24/2002 Exhibit SNO-133 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Questionnaire.

10/24/2002 Exhibit TAC-134 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Regression Back Up.

10/24/2002 Exhibit 134 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Chart. 1 of 6.

10/24/2002 Exhibit 134 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: General Information - List of Numbers. Part 2 of 6.

10/24/2002 Exhibit 134 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: General Information - List of Numbers. Part 3 of 6.

10/24/2002 Exhibit 134 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28:Mac Replication. Part 4 of 6.

10/24/2002 Exhibit MSC-134 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:NYMEX Strip Part 5 of 6.

10/24/2002 Exhibit MSC-134 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28:TFS-2003. Part 6 of 6.

10/24/2002 Exhibit MSC-135 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28:Jonathan Perry - Audio Clips.

10/24/2002 Exhibit MSC-178 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28:John White *et al.* Tape.

10/25/2002 Southern California Water Co's motion to strike portion of Cross-Examination Testimony of Dr Timothy Mount re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*

10/25/2002 Exhibit 99 in Nevada Power Company and Sierra Pacific Power Company's proceeding under EL00-28:Creditworthiness agreement with continuing credit review by BPA.

10/26/2002 Exhibit NPC-72 in Nevada Power Co & Sierra Pacific Power Co's

proceeding under EL02-28 *et al.*: Electricity Market Reform in California Report.

10/26/2002 Exhibit MSC-63 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: International Waps and Deviatives Association, Inc's Credit Support Annex.

10/28/2002 Rebuttal Testimony of John P. White on behalf of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL 2-26 *et al.*,

10/28/2002 Exhibit SNO-51 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Wholesale Power Cost Components 2002 Budgets.

10/28/2002 Exhibit MSC-43 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Graph- Henry Hub Natural Gas Future Prices.

10/29/2002 Transcript of October 16, 2002 hearing in Washington DC re Nevada Power Co & Sierra Pacific Power Co *et al.*Volume 24, Pp 2728-2995.

10/29/2002 Order confirming rulings re Nevada Power Co *et al.* v Enron Power

Marketing, Inc *et al.* under El02-28 *et al.*

10/30/2002 Order granting Southern California Water Co's motion to strike portions of rge cross-examination testimony of Dr T Mount re Nevada Power Co v Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

10/30/2002 Opposition of Morgan Stanley Capital Group Inc to Interlocutory Appeal of Public Utility District *No.*1 of Snohomish County, Washington to the Denial of Motion to Take Interlocutory Appeal re Nevada Power Co, EL02-28 *et al.*

10/30/2002 Proposed transcript corrections of the office of the Attorney General for the State of Nevada, Bureau of Consumer Protection re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

10/30/2002 Transcript corrections of Calpine Energy Services, LP re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

10/30/2002 Proposed transcript corrections of Southern California Water Co re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC

et al. under EL02-26 *et al.*

10/30/2002 Proposed transcript corrections of Nevada Power Co and Sierra Pacific Power Co re Enron Power Marketing Inc *et al.* under EL02-28 *et al.*

10/30/2002 Transcript corrections of Mirant Americans Energy Marketing, LP re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

10/30/2002 Proposed hearing transcript corrections of the Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

10/30/2002 Proposed hearing transcript corrections of the Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-28 *et al.* Non-Public.

10/30/2002 Proposed Transcript Corrections of BP Energy Company re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*

10/31/2002 Notice of determination by Chairman re Public Utility District 1 of

	Snohomish County, Washington under EL02-28 *et al.*
10/31/2002	Procedural Motion of Allegheny Energy Supply Company, L.L.C. under EL02-28.
10/31/2002	Procedural Motion of Allegheny Energy Supply Company, L.L.C. under EL02-28.
10/31/2002	Objection of Public Utility District 1 of Snohomish County, Washington to removal of stricken testimony from hearing transcripts re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
10/31/2002	Supplemental proposed transcript correction and response of Mirant Americas Energy Marketing, LP, to the proposed transcript corrections of Southern California Water Co re Nevada Power Co *et al.* under EL02-28 *et al.*
11/1/2002	Morgan Stanley Capital Group, Inc resubmits Corrected Exhibit MSC 8: Direct Testimony of Kamal S Hamdan al under EL02-26 *et al.*
11/1/2002	Morgan Stanley Capital Group, Inc submits direct testimony & corrected Exhibit MSC-8 of Kamal S Hamdan *et al.* re Nevada Power Co & Sierra Pacific Power Co *et al.* v Enron Power Marketing, Inc *et al.*, EL02-28 *et al.*

Non-Public.

11/2/2002 Reply Brief of the Commission Trial Staff re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

11/4/2002 Order approving transcript corrections re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*

11/4/2002 Order approving transcript corrections re Nevada Power Co *et al.* v Enron Power Marking Inc *et al.* under EL02-28 *et al.*

11/4/2002 Request for Withdrawal of Request for Rehearing of Senator Cantwell under EL02-28 *ET AL.*

11/4/2002 Morgan Stanley Capital Group Inc submits the Corrected version of Exhibit MSC-5: direct testimony of Howard W Pifer re Nevada Power Co & Sierra Pacific Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

11/4/2002 Order approving transcript corrections re Nevada Power Co *et al.* v Enron power Marketing, Inc *et al.* under EL02-28 *et al.*

11/4/2002 Order approving transcript corrections re Nevada Power Co *et al.*

	v Enron power Marketing, Inc *et al.* under EL02-28 *et al.*
11/7/2002	This document is not part of this docket/sub docket. Information: DOC INFO
11/8/2002	Morgan Stanley Capital Group Inc submits its Proposed Conclusions of Law etc re Nevada Power Co and Sierra Pacific Power v Duke Energy Trading & Marketing LLC *et al.* under EL02-28 *et al.*
11/8/2002	Morgan Stanley Capital Group Inc submits its Post Hearing Brief re Nevada Power Co and Sierra Pacific Power Co v Enron Power Marketing Inc et a l under EL02-28 *et al.*
11/8/2002	Initial Post-hearing Brief of the State Regualtory Entities Group re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*
11/8/2002	Inital Brief of Commission Staff re Nevada Power Co and Sierra Pacific Power Co v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
11/8/2002	Initial brief of Nevada Power Co and Sierra Pacific Power Co under EL02-28 *et al.*

11/8/2002	Initial brief of Allegheny Energy Supply Company on real party interest issues regarding Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
11/8/2002	Allegheny Energy Supply Co, LLC's *et al.* submits an initial brief re Nevada Power Co *et al.* v Enron Power Marleting, Inc under EL02-28 *et al.* NON-PUBLIC.
11/8/2002	Morgan Stanley Capital Group Inc's post hearing brief & proposed finding of fact related to the complaint of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* under EL02-28 *et al.* pd
11/8/2002	Morgan Stanley Capital Group Inc's proposed findings of fact related to the compliant of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* under EL02-28 *et al.*
11/8/2002	Initial brief of Southern California Water Co *et al.* in support of immediate termination or substantial reformation of Morgan Stanley Capital Group, Inc's etc re Nevada Power Co *et al.* v Eron Power Market, Inc *et al.* under EL02-28 *et al.*
11/13/2002	Initial brief of Southern California

	Water Co *et al.* re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*
11/14/2002	Public Utility District *No.*1 of Snohomish County, WA's Revised Public Version of Initial Brief, including as Appendix A, a Revised Public Version of proposed Findings of Fact and Conclusion of Law etc re Nevada Power Co *et al.*, EL02-28 *et al.*
11/15/2002	Errata to Respondents' joint proposed Conclusion of Law, which corrects the numbering convention, etc re Nevada Power Co *et al.* v Enron Power Marketing, Inc under EL02-28 *et al.*
11/18/2002	Revised Public Version of Initial Post-Hearing Brief of Public Utility District *No.*1 of Snohomish County, WA in support of immediate termination or substantial reformation of Morgan Stanley Capital Group Inc's Collateral Anex, EL02-28 *et al.*
11/18/2002	Motion of Mirant Americas Energy Marketing LP for Immediate Enforcement of the Protective Order and Request for Shortened Period for Response re Nevada Power Co *et al.* under EL02-28 *et al.*
11/18/2002	Motion of Mirant Americas Energy Marketing LP for Immediate

	Enforcement of the Protective Order and Request for Shortened Period for Response re Nevada Power Co under EL02-28 *et al.* Non Public.
11/19/2002	Order on Mirant Americas Energy Marketing, LP's motion for immediate enforcement of the protective order & request for shortened period for response re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
11/20/2002	Errata to the public version of rebuttal testimony of John P. White on behalf of Public Utility District 1 of Snohomish County, WA re Nevada Power Co *et al.* v Duke Energy Trading & Marketing *et al.* under EL02-26 *et al.*
11/21/2002	Answer/Response to a Pleading/Motion of Southern California Water Company under EL02-28 *ET AL.*
11/22/2002	Post-hearing reply brief of the Office of the Attorney General for the State of Nevada, Bureau of Consumer Protection re Nevada Power Co *et al.* under EL02-28 *et al.*
11/22/2002	Reply brief of Allegheny Energy Supply Co on real party in interest issue re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.*

under EL02-28 *et al.*

11/22/2002 Nevada Power Co & Sierra Pacific Power Co's proposed supplemental finding of fact & conclusion of law re Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

11/22/2002 Reply Brief of Respondents re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

11/22/2002 Reply Brief of Nevada Power Co and Sierra Pacific Power Corp re Enron Power Marketing Inc *et al.* under EL02-28 *et al.*

11/22/2002 Motion of Morgan Stanley Capital Group, Inc's to compel return of highly sensitive protected materials and for sanctions, & request for expedited consideration re Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.*, EL02-28 *et al.*

11/22/2002 Reply brief of Southern California Water Co and Public Utlity District *No.* 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

11/22/2002 Reply brief of Southern California Water Co and Public Utility District *No.*1 of Snohomish County,

Washington re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*Non-Public. Protected Material.

11/22/2002 Reply brief of Morgan Stanley Capital Group Inc re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

11/22/2002 Morgan Stanley Capital Group Inc submits reply brief re Nevada Power Co *et al.* v Enron Power Marketing, Inc, *et al.* under EL02-28 *et al.* PROTECTED MATERIALS.

11/22/2002 Reply post-hearing brief of Snohomish County Public Utility District 1 in support of immediate termination or substantial reformation of Morgan Stanley Capital Group Inc's Collateral Annex under EL02-28 *et al.*

11/22/2002 Reply post-hearing brief of Snohomish County Public Utility District 1 in support of immediate termination or substantial reformation of Morgan Stanley Capital Group Inc's Collateral Annex under EL02-28 *et al.* Protected Materials.

11/22/2002 Morgan Stanley Capital Group Inc submits its motion to compel return of highly sensitive protected materials and for sanctions, & request for expedited consideration re Nevada

	Power Co v Enron Power Marketing, Inc under EL02-28 *et al.*
11/22/2002	Morgan Stanley Capital Group Inc's motion to compel return of highly sensitive protected materials & for sanctions, & request for expedited consideration re Nevada Power Co *et al.* v Enron Power Marketing, Inc under EL02-28. Protected.
11/25/2002	Answer/Response to a Pleading/Motion of PUD No. 1 Snohomish Co., Washington under EL02-28 *et al.*
12/2/2002	Nevada Power Company and Sierra Pacific Power Company's Proposed Supplemental Findings of Fact and Conclusion of Law re Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
12/5/2002	Public District *No.*1 of Snohomish County, WA submits a Revised Public Version of Exhibit *No.*SNO-91 per the request of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*
12/5/2002	Public District *No.*1 of Snohomish County, WA submits a Revised Public Version of Exhibit *No.*SNO-91 per the request of Morgan Stanley Capital Group Inc re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.*

under EL02-28 *et al.*

12/9/2002 Answer of Public Utility District *No.*1 of Snohomish County, Washington in opposition to Morgan Stanley Capital Group Inc's motion to compel return of highly sensitive protected materials etc under EL02-28 *et al.*

12/9/2002 Answer of Public Utility District *No.*1 of Snohomish County, Washington in opposition to Morgan Stanley Capital Group Inc's motion to compel return of highly sensitive protected materials etc under EL02-28 *et al.* Protected Materials.

12/11/2002 Order of Chief Judge scheduling oral argument re Nevada power Co *et al.* under EL02-28 *et al.*

12/13/2002 Answer/Response to a Pleading/Motion of Morgan Stanley Capital Group Inc. under EL02-28 *ET AL.*

12/17/2002 Transcript of 12/17/02 hearing in Washington, DC re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-28 *et al.* Volume 30, Pp 4629-4680.

12/19/2002 Initial decision re Nevada Power Co *et al.* under EL02-28 *et al.*

12/19/2002 Order confirming rulings re Nevada Power Co *et al.* v Enron Power

Marketing, Inc *et al.* under EL02-28 *et al.*

12/23/2002 Order of Chief Judge Terminating Settlement Judge Procedures re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*

1/9/2003 Errata notice to Initial decision dated 12/19/02 re Nevada Power Co & Sierra Pacific Power Co v Duke Energy Trading & Marketing ,LLC *et al.* under EL02-26 *et al.*

1/15/2003 Joint Motion for Extension of Time to File Brief on Exceptions until 1/28/2003 and Request for Expedited Consideration, under EL02-28, *et al.*

1/16/2003 Notice granting Nevada Power Co *et al.* an extension of time to and including 1/28/03 to file brief on exceptions to the 12/19/02 Initial Decision under EL02-28 *et al.*

1/23/2003 Administration Law Judge's Certification of Initial Decision and Record re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*

1/28/2003 Administrative Law Judge's certification of initial decision and record re Nevada Power Co & Sierra Pacific Power Co v Enron Power

	Marketing Inc *et al.* under EL02-28 *et al.*
1/28/2003	Brief on Exceptions of Nevada Power Company and Sierra Pacific Power Company under EL02-28.
1/28/2003	Briefs on Exceptions of Southern California Water Company under EL02-28 *ET AL.*
1/28/2003	Enron Power Marketing, Inc's brief on exceptions re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under ER02-28 *et al.*
1/28/2003	Brief on exceptions of the Public Utilities Commission of Nevada re Nevada Power Co and Sierra Pacific Power Co v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*,
1/28/2003	Brief on Exception of Allegheny Energy Supply Co on Real Party Interest Issue re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*
1/28/2003	Brief on exceptions of Public Utility District *No.*1 of Snohomish County, Washington etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-28 *et al.*

1/28/2003	Brief on exceptions of Public Utility District *No.*1 of Snohomish County, Washington etc re Nevada Power Co *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under EL02-28 *et al.* Protected Material.
1/28/2003	Brief on exceptions of the Commission Trial Staff re Nevada Power Co and Sierra Pacific Power Co v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*
2/4/2003	Errata Notice to the 12/19/02 Intial Decison re Nevada Power Co and Sierra Pacific Power Co v Enron Power Marketing Inc, El Paso Merchant Energy *et al.* under EL02-28 *et al.*
2/11/2003	Motion of Public Utility District No. 1 of Snohomish County, Washington to Correct the Administrative Law Judge's Certification of Initial Decision and Record under EL02-28, *et al.*
2/19/2003	Joint Motion for 3-day Extension of Time to file briefs opposing exceptions of Calpine Energy Services, L.P. *et al.* under EL02-28 *et al.*
2/24/2003	Notice granting Calpine Energy Services, LP, Allegheny Energy Supply Co, LLC's *et al.* filing of extension of time to file briefs

	opposing exceptions until 02/28/03 by the Presiding Judge's Initial Decision dated 12/19/02 under EL02-28 *et al.*
2/28/2003	Exhibit EMPI-11 in Nevada Power Co and Sierra Pacific Power Co's proceedings under EL02-28 *et al.*: Response to Data Request 2.
2/28/2003	Exhibit EPME-28 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:Daily Volume of NYMEX transactions from 03/29/96 to 07/29/01
2/28/2003	Brief of Nevada Power Company and Sierra Pacific Power Company Opposing Exceptions under EL02-28.
2/28/2003	Motion for Oral Argument of Nevada Power Co & Sierra Pacific Power Co under EL02-28.
2/28/2003	Brief on exceptions of Southern California Water Co, Inc by reference certain exceptions taken by Nevada Power Co, Sierra Pacific Power Co, and Public Utility District 1 of Snohomish County, Washington under EL02-28 *et al.*
2/28/2003	Motion for oral argument of Southern California Water re Nevada Power Co & Sierra Pacific Power Co *et al.* v Enron Power Marketing, Inc etc under EL02-28 *et al.*

2/28/2003	Brief of Southern California Water Co opposing exceptions taken by Enron Power Marketing Inc re Nevad Power Co and Sierra Pacific Power Co v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*
2/28/2003	Brief Opposing exceptions of the Commission Trial Staff re Nevada Power Company and Sierra Pacific Power Company v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
2/28/2003	Brief of Mirant Americas Energy Marketing, LP Opposing Exceptions re Nevada Power Co, Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
2/28/2003	Respondent's joint brief opposing the exceptions of the Nevada Power Co, Sierra Pacific Power Co and the Nevada Public Utilities Commission re Enron Power Marketing Inc, El Pas Merchant Energ LP *et al.* under EL02-28 *et al.*
2/28/2003	Motion for Oral Argument of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc, El Paso Merchant Energy *et al.* under EL02-28 *et al.*

2/28/2003	Summary of Brief Opposing exceptions of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.* Non-Public.
2/28/2003	Morgan Stanley Capital Group Inc's Brief Opposing the exceptions of the Public Utility District 1 of Snohomish County, Washington and Commission Trial Staff re Nevada Power Co & Sierra Pacific Power Co *et al.*, EL02-28 *et al.*
2/28/2003	Morgan Stanley Capital Group Inc's Brief Opposing the exceptions of the Public Utility District 1 of Snohomish County, Washington & Commission Trial Staff re Nevada Power Co *et al.* under EL02-28 *et al.* Non-public
3/4/2003	Request for Substitution of e-filing in Accession Number 20030228-5111 for the paper copy version filed 2/28/03 of Snohomish Co. Public Utility Dist. No. 1. re Nevada Power Co *et al.* under EL02-28, *et al.*
3/6/2003	Supplement Errata to Morgan Stanley Capital Group Inc.'s Brief Opposing the Exceptions of the Public Utility District No. 1 of Snohomish, County Washington and Commission Trial Staff under EL02-28 *ET AL.*

3/7/2003	Exhibit NPC-89 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*:TFS Energy Electricity West Report.
3/11/2003	Motion for leave to file limited answer and answer of Mirant Americas Energy Marketing, LP regarding Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
3/11/2003	Motion for oral arguement and request to submit motion out ot time to the Public Uttilites Commission of Nevada re Nevada Power Co &Sierra Pacific Power Co v Eron Power Marketing, Inc *et al.* under EL02-28 *et al.*
3/12/2003	Answer to a Motion for Leave To File Limited Answer of Southern California Water Company re Nevada Power Company *et al.* under EL02-28 *et al.*
3/14/2003	Exhibit SNO-96 in Nevada Power Co and Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Changes to testimony.
3/14/2003	Exhibit MSC-100 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Response to Question MAEM/SNO 4-7.

3/14/2003	Exhibit MSC-38 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Frederick Baird's education history .
3/14/2003	Exhibit MSC-55 in Nevada Power Co & Sierra Pacific Power Co's proceeding under EL02-28 *et al.*: Prepared Direct Testimony of Edward J Zabrocki on behalf of Morgan Stanley Capital Group Inc.
3/14/2003	Motion for Leave to File Answer & Answer of American Electric Power Service Corp, Allegheny Energy Supply Co, LLC, Calpine Energy Services,LP *et al.* to the motion for oral argument under EL02-28 *et al.*
3/20/2003	Reply Comments of the Transaction Finality Group Opposing Any New Findings of Fact & supporting documents & prepared testimony of Scott M Harvey *et al.* on behalf of Morgan Stanley Capital Group, EL01-10. Part 5A of 5
4/2/2003	Renewed Motion for Oral Argument of Southern California Water Company under EL02-28 *ET AL.*
4/7/2003	Motion for disclosure of prohibited off-the-record communications and further relief on Southern California Water Co *et al.* re Nevada Power Co and Sierra Pacfic Power Co v Enron

	Power Marketing Inc *et al.* under EL02-28 *et al.*l
4/10/2003	Notice of change of affiliation and change of address of counsel for the City of Tacoma, Washington re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*
4/14/2003	Notice Scheduling Oral Argument re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc, El Paso Merchant Energy, American Electric Power Services, Corp *et al.* under EL02-28 *et al.*
4/15/2003	Motion to lodge additional exhibit to 4/07/03, Motion for Disclosure of Prohibited off-the-record communications & further relief of Southern California Water Co & Public Utility District 1 of Snohomish County, WA etc under EL02-28 *et al.*
4/16/2003	Motion of Public Utility District No.1 of Snohomish County, Washington to Reopen the Record under EL02-28 *ET AL.*
4/17/2003	Respondents' Supplemental Answer In Oppositin to Combined Oral Argument of Non-Consolidated Proceedings under EL02-28 *ET AL.*
4/18/2003	Joint Notice of Allocation of Time for Oral Argument re Nevada Power

Company, *et al.* under EL02-28 *et al.*

4/22/2003 Motion of Snohomish County PUD No. 1 For Recusal & Issuance of Order Directing Stanley Capital Group, Inc. As Well As Its Company Affiliates, To Show Cause Why Sanctions Should Not Be Imposed, *et al.* under EL02-28, *et al.*

4/22/2003 Transcript of press conference held in Washington, DC re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*

4/22/2003 Revised Summary of Events relating to FERC conference call w/investment community on 3/26/03 re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.*, EL02-28 *et al.* Prepared by Kevin Cadden. List of invitees at 20030422-0360.

4/22/2003 List of financial analysts invited to participate in FERC conference call w/investment community on 3/26/03 re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.*, EL02-28 *et al.* Prepared by Kevin Cadden. See 20030422-0356.

4/22/2003 Answer of Morgan Stanley Capital Group Inc in opposition to the motion of the Public Utility District 1 of Snohomish County, Washington to reopen the record or in the

	alternative, etc re Nevada Power Co *et al.* under EL02-28 *et al.*
4/22/2003	Answer in opposition to the motion of the Public Utility District *No.*1 of Snohomish County, Washington for recusal & issuance of a Show Cause Order & Motion for Sanctions re Nevada Power Co *et al.* under EL02-28 *et al.*
4/23/2003	Order on Motion for Disclosure & Recusal re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
4/24/2003	Motion to lodge oral agrument Exhibits of Southern California Water Co re Nevada Power Co & Sierra Pacific Power Co *et al.* under EL02-28 *et al.*
5/1/2003	Indicated Sellers' answer to motion to reopen the evidentiary record or, in the alternative, to take official notice re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc, *et al.* under EL02-28 *et al.*
5/7/2003	Answer of Snohomish County PUD No. 1 under EL02-28 *ET AL.* to Motion for Sanctions, Affidavits of Allen J. Aldrich, Cynthia R. First and John P. White,of Morgan Stanley Capital Group, Inc.

5/7/2003	Answer of Public Utility District No. 1 of Snohomish County, Washington to MSCG Motion for Sanctions in connection with Motion to Reopen the Record under EL02-28 *ET AL.*
5/7/2003	Motion & Response of Snohomish County PUD No. 1 under EL02-28 *ET AL.* to Answer of Morgan Stanley Capital Group, Inc. re: Motion to Reopen under EL022-28 *et al.*
5/9/2003	Mirant Americas Energy Marketing, LP's Answer to the Motion to Lodge Oral Arguments Exhibits of Aouthern Califormia Water Co re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing Inc, *et al.*, EL02-28 *et al.*
5/14/2003	California Power Exchange Corporation request the correction of several out-of-date service list under ER03-139 *et al.*
5/15/2003	The Public Utility District 1 of Snohomish County, Washington submits signed copies of three affidavits of Allen Aldrich, Commissioner Cynthia First, and John White to the 5/7/03 answer re Nevada Power Co *et al.* under EL02-28 *et al.*
5/16/2003	Answer/Response to a Pleading of Southern California Water Company

under EL02-28 *ET AL.*

5/16/2003	Motion for permission to file a response & response of Public Utility District *No.*1 of Snohomish County, Washington to Indicated Sellers' answer to motion to reopen the evidentiary record etc re Nevada Power Co *et al.* under EL02-28 *et al.*
5/16/2003	Motion for permission to file a response & response of Public Utility District *No.*1 of Snohomish County, Washington to Indicated Sellers' answer to motion to reopen the evidentiary record etc re Nevada Power Co *et al.* under EL02-28 *et al.*
5/20/2003	Public Utility District 1 of Snohomish County, WA submits an Errata to the Affidavit of Robert F McCullough Jr to the motion for permission to file a response etc re Nevada Power Co and Sierra Pacific Power Co *et al.* under EL02-28 *et al.*
5/20/2003	Motion for Permission to File a Response and Response of Morgan Stanley Capital Group Inc. to the Answer of Public Utility District No. 1 of Snohomish County, Washington to MSCG's Motion for Sanctions, under EL02-28 *ET AL.*
5/29/2003	Motion for Stay of Snohomish County PUD No. 1 under EL02-28 *ET AL.*

6/6/2003	Notice of Substitution of Counsel for the City of Tacoma, Washington, and Filing of Non-Disclosure Certificates re Nevsda Power Co, Sierra Pacific Power Co *et al.* under EL02-26 *et al.*
6/13/2003	Answer of indicated respondents opposing the motion for stay of the Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* under EL02-28 *et al.*
6/26/2003	Order on Initial Decision, Rehearing Requests, and Motions re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing Inc, El Paso Merchant Energy, & American Electric Power Services, Corp, etc under EL02-28 *et al.*
7/21/2003	Bruder, Gentile & Marcoux, LLP request that the address for all attorneys be changed on the official service list under AC02-8 *et al.*
8/26/2003	Change of Service Lists for Public Utility District 1 of Snohomish County, WA under EL02-115 *et al.*
10/2/2003	Portland General Electric Co's request the removal of Sania R Radcliffe and addition of Valencia Tolbert-Fisker to FERC's official service lists under EL02-80 *et al.*
10/3/2003	Transcript of 10/3/03 oral argument at

FERC in Washington, DC regarding Nevada Power Co and Sierra Pacific Power Co *et al.* under EL02-26 *et al.* Volume 18.

10/20/2003 Portland General Electric requests that FERC withraw A W Turner, and add V Denice Saunders to the service list under EL01-10 *et al.*

10/30/2003 Comments of Senator Maria Cantwell *et al.* in support of the request for rehearing of June 26 order filed by the complaints under EL02-28 *et al.*

11/5/2003 US Senator Maria Cantwell *et al.* writes FERC in support of the requests for rehearing filed by complainants in Nevada Power Co & Sierra Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

7/21/2004 Change of Law Firm Affiliation and Address for Official Service Lists under EL00-95 *et al.*

12/8/2004 Change to Service List for Christine Pallenik and Steve Lavigne of Duke Energy Trading & Marketing, L.L.C. under EL00-95 *ET AL.*

12/8/2004 Change to Service List of Duke Energy Trading & Marketing, L.L.C. under EL00-95 *ET AL.*

9/28/2007	Offer of settlement, request to accept transmission service agreement and request for shortened comment period for Nevada Power Co and Sierra Pacific Power Co under ER07-1409 *et al.*
10/18/2007	INITIAL COMMENTS OF THE COMMISSION TRIAL STAFF ON OFFER OF SETTLEMENT under EL02-28, *et al.*
5/8/2002	Request for Rehearing or Appeal of FERC's Order Issued 4/11/2002 of Office of Senator Maria Cantwell under EL02-26.
5/10/2002	Motion for clarification or, in the alternative, request for rehearing of Nevada Power Company and Sierra Pacific Power Company of FERC's 4/11/02 Order re Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*
5/10/2002	Request for rehearing of Enron Power Marketing, Inc of FERC's 4/11/02 Order re Nevada Power Company *et al.* v Duke Energy Trading and Marketing, LLC *et al.* under ER02-26 *et al.*
5/13/2002	Request for Rehearing of the Nevada Attorney General, Bureau of Consumer Protection of FERC's Order Issued 4/11/02 under EL02-26 *et al.*

5/13/2002	Request for Clarification and Rehearing of FERC's Order Issued 4/11/02 of Reliant Energy Services, Inc. under EL02-32, *et al.*
5/13/2002	Request for Rehearing or Appeal of FERC's Order Issued 4/11/02 of American Electric Power Service Corp., *et al.* under EL02-26.
5/13/2002	Request for Rehearing or Appeal of FERC' s Order Issued 4/11/02 Duke Energy Trading & Marketing, LLC, *et al.* under EL02-26, *et al.*
5/13/2002	Correction to its Request for Rehearing In accession *No.* 200205135106 of FERC's Order Issued 4/11/02 of Duke Energy Trading & Marketing, LLC under EL02-26 *ET AL.*
5/13/2002	Request for rehearing of the Commission's Order issued on 4/11/02 of Allegheny Energy Supply Company, LLC re Nevada Power Company and Sierra Pacific Power Company v Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
5/13/2002	Request for rehearing and clarification of the Commission's 4/11/02 Order of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Morgan

	Stanley Capital Group *et al.* under EL02-26 *et al.*
5/13/2002	Request for rehearing and clarification of the Commission's 4/11/02 Order of Public Utility District 1 of Snohomish County, Washington re Nevada Power Co *et al.* v Morgan Stanley Capital Group *et al.* under EL02-26 *et al.*Non-Public.
5/13/2002	Request for rehearing of Morgan Stanley Capital Group Inc of the Commission's 04/11/02 Order re Nevada power Company & Sierra Pacific Power Company v Duke Energy Trading & Marketing LLC *et al.* under EL02-26 *et al.*
5/17/2002	Motion of Senator Maria Cantwell for late intervention re Nevada Power Co *et al.* v Duke Energy Trading & Marketing LLC *et al.* under EL02-56 *et al.*
5/30/2002	Answer of American Electric Power Service Corp to the motion for clarification for, in the alternative, request for rehearing of Nevada Power and Sierra Pacific Power Co re Duke Energy Trading and Marketing LLC *et al.* under EL02-26 *et al.*
6/7/2002	Order granting rehearing for further consideration of the Commission's 4/11/02 Order re Nevada Power Company and Sierra Pacific Power

Company v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.*

7/10/2002 Notice of Commission meeting 7/17/02 under AD02-1 *et al.*

9/17/2002 Order addressing requests for rehearing and clarification regarding Nevada Power Company & Sierra Pacific Power Co v Duke Energy Trading and Marketing, LLC *et al.* under EL02-26 *et al.* Dissent Statement of Commissioner Massey.

10/17/2002 Request for Rehearing or Appeal of FERC's Order Issued 9/17/2002 of Senator Maria Cantwell D-WA under EL02-28 *ET AL.*

10/17/2002 Joint Request of Nevada Power Company and Sierra Pacific Power Company for Rehearing of FERC's 9/17/02 under EL02-28 *et al.*

10/25/2002 Order granting rehearing of the Commission's 9/17/02 Order for further consideration re Nevada Power Co *et al.* v Enron Power Marketing Inc *et al.* under EL02-28 *et al.*

6/26/2003 Order on Initial Decision, Rehearing Requests, and Motions re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing Inc, El Paso Merchant Energy, & American

	Electric Power Services, Corp, etc under EL02-28 *et al.*
11/5/2003	US Senator Maria Cantwell *et al.* writes FERC in support of the requests for rehearing filed by complainants in Nevada Power Co & Sierra Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
10/22/2002	Request for Rehearing of FERC's Order issued 9/23/02 of Sacramento Municipal Utility District under EL02-109.
10/23/2002	Request for Rehearing and Clarification of FERC's Order Issued 9/23/02 on behalf of Public Utility District No. 1 of Snohomish County, Washington under EL02-100 *ET AL.*.
10/23/2002	Request of American Electric Power Service Corp for clarification or, in the alternative, rehearing of FERC's 9/23/02 Order re Public Utility District 1 of Snohomish County, Washington under EL02-29 *et al.*
11/7/2002	Response of American Electric Power Service Corporation to request for rehearing and clarification re Public Utility District 1 of Snohomish County, WA *et al.* under EL02-100 *et al.*

11/21/2002	Order granting rehearing of 9/23/02 Order for further consideration re Public Utility District 1 of Snohomish County, Washington v American Electric Power Service Corp *et al.* under EL02-100 *et al.*
5/23/2003	Request for rehearing of FERC's April 23 Order of Southern California Water Co & Public Utility District 1 of Snohomish County, Washington under EL02-28 *et al.*
6/23/2003	Order granting rehearing for further consideration of FERC's 04/23/03 Order re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
11/10/2003	Order on requests for rehearing of 6/26/03 order & clarification re Nevada Power Co & Sierra Pacific Power Co v Morgan Stanley Capital Group *et al.* under EL02-28 *et al.*
5/14/2007	Motion of Public Utility District No. 1 of Snohomish County, Washington, *et al.* for Relief and Response to Prohibited Ex Parte Communication under PA02-2 *et al.*
5/14/2007	Motion of Public Utility District No. 1 of Snohomish County, Washington, *et al.* for Relief and Response to Prohibited Ex Parte Communication

	under PA02-2
7/25/2003	Request for Rehearing of FERC's Order Issued 6/26/03 of Public Utilities Commission of Nevada under EL02-28 *ET AL.*
7/28/2003	Supplement Request for Rehearing of FERC's Order Issued 6/26/2003 of Snohomish County PUD No. 1 under EL02-28 *ET AL.*
7/28/2003	Request of Nevada Power Company and Sierra Pacific Power Company for Rehearing of FERC's Order Issued 6/262003 under EL02-28-000, *et al.*
7/28/2003	Respondents' limited request for clarification or, in the alternative, for rehearing of FFRC's 6/26/03 Order re Nevada Power Co *et al.* under EL02-28 *et al.*
7/28/2003	Southern California Water Co's request for rehearing of FERC's 6/26/03 Order regarding Nevada Power Co *et al.* v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
7/28/2003	Request for rehearing of Public Utility District of Snohomish County, Washington re Navada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*

7/29/2003	The Public Utility District 1 of Snohomish County, Washington submits its request for rehearing of FERC's 6/26/03 Order regarding Nevada Powei Co *et al.* under EL02-28 *et al.*
7/30/2003	Supplement Errata to Request for Rehearing or Appeal of Southern California Water Company under EL02-28 *ET AL.*
8/25/2003	Order granting rehearing of 6/26/03 order for further consideration re Nevada Power Co & Sierra Pacific Power Co v Enron Power Marketing, Inc *et al.* under EL02-28 *et al.*
5/14/2007	Motion of Public Utility District No. 1 of Snohomish County, Washington, *et al.* for Relief and Response to Prohibited Ex Parte Communication under PA02-2 *et al.*
5/14/2007	Motion of Public Utility District No. 1 of Snohomish County, Washington, *et al.* for Relief and Response to Prohibited Ex Parte Communication under PA02-2

APPENDIX B

CHRONOLOGICAL LIST OF DOCKET ENTRIES

II. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

A. Docket No. 03-72511

Date Filed	Docket Text
2/13/07	MANDATE ISSUED [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)
3/12/07	Received letter from the Supreme Court dated 03/08/07 re: ex. time granted to and including May 3, 2007 in which to file petition for writ of certiorari. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)
3/15/07	Received letter from the Supreme Court dated 03/12/07 re: ex.tm.f petition for writ of certiorari granted to and including May 3, 2007. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je)

5/08/07	Received notice from Supreme Court: petition for certiorari filed in Supreme Court No. 06-1457. filed on 5/4/07. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712]
5/11/07	Received notice from Supreme Court: petition for certiorari filed in Supreme Court No. 06-1462 filed on May 3, 2007. [Served Panel] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)
6/18/07	Rec'd notice of change of address from Bruce W. Neely for Intervenor Enron Power in 03-72511 dated 06/12/07. [new address 1101 N.Y. Ave., NW, St. 1100, Washington, DC 20005] [03-72511] (je)
10/02/07	Received notice from Supreme Court, petition for certiorari GRANTED on 9/25/07. Supreme Court Nos. 06-1457 and 06-1462 are consolidated. (lee) [03-72511, 03-74208, 03-74617, 03-74757, 04-70712]
10/03/07	Rec'd notice of change of address from LeBoeuf Lamb Greene MacRae LLP. New firm name: Dewey & LeBoeuf LLP, same address. (dated 10/3/07) [03-72511] (lee)

B. Docket No. 03-74208

Date Filed	Docket Text
11/20/03	FILED PETITION FOR REVIEW DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL, NOTIFIED RESPONDENTS OF FILING, SENT PETITIONER CIVIL APPEALS DOCKETING STATEMENT. Setting schedule as follows: petitioners' opening brief is due 2/9/04; respondents' brief is due 3/9/04; petitioner's optional reply brief is due 3/23/04. [03-74208] (vt) [03-74208]
11/20/03	Filed Michael J. Gianunzio in 03-74208 Civil Appeals Docketing Statement served on 11/19/03 (to CONFATT) [03-74208] [03-74208] (vt) [03-74208]
12/4/03	Rcvd notice of aappearance of Larry Grasteiger as counsel for the responent. [03-74208] (wp) [03-74208]
12/8/03	Filed order (Deputy Clerk: BS) Based on a review of the CADS, this case is not selected for inclusion in the Mediation Program. The existing briefing schedule remains in effect. Counsel for any party interested in obtaining assistance from the court in pursuing settlement of the case on

appeal or learing more about the Mediation Program is encouraged to contact Lisa J. Evans, Circuit Mediator. The communication will be kept confidential, if requested, from the other parties in the case. Counsel are requested to send copies of this order to their clients. [03-74208] (ca) [03-74208]

12/31/03 Filed motion and deputy clerk order :(Deputy Clerk: lkk) CalPine Energy Service, L.P., El Paso Merchant Energy L.P., and Morgan Stanley Capital Group, Inc's motion to intervene as non-aligned are granted. Intervenor's Mirant American et al.,'s motion to intervene as non-aligned is granted. However, Mirant American et al.,'s motion to intervene on any further petitions for review that have not yet been filed with this court is denied without prejudice to file a separate motion for each case movant wishes to intervene in intervene in BP. Energy's and Allegheny Energy Supply CO. motion to intevene as aligned with the respondent is granted. The intervenor's briefs shall be due 3/25/04. The reply brief is due 28 days from the service of the respondent's brief. (Motion recvd 12/22/03) [03-74208] (wp) [03-74208]

1/12/04 Filed certified list in lieu of record on

appeal. [03-74208] [03-74208] (wp) [03-74208]

1/20/04 Filed Petitioner Public Utility Dist's motion for discovery or for an evidentiary hearing. (MOATT) [03-74208] served on 1/16/04 [4951197] [03-74208] (wp) [03-74208]

1/22/04 Filed motion and deputy clerk order :(Deputy Clerk: cb) The clerk sua sponte consolidates Nos. 03-74208, 03-74601, 03-74617, 03-74630, 03-74631 and 03-74757. Respondent's motion for extension of time until 1/12/04 to file the certified index of record for 03-74208 is granted nunc pro tunc. If the indices for any of the above-captioned cases have not been filed, respondent shall do so within 14 days after the date of this order. Mirant's motion to clarify the 12/31/03 order is granted. Court records shall reflect that Mirant intervening in 03-74208 on behalf of respondent. The 12/31/03 order is additionally modified to provide that Calpine Energy Services is intervening on behalf of respondent. The motion of the CA PUC to inverene on behalf of petitioners in all the above-captioned petitions is granted. El Paso Merchant's motion to intervene on behalf of respondent in all the above-captioned petitions is granted. If further petitions are consolidated with

the above-captioned petitions the California PUC and El Paso will be deemed intervenors in those cases well. American Electric Power Service Corp's motion to participate in Nos. 03-74208 and 03-74617 as non-aligned intervenor is granted. The motions of the Santa Clara to intervene in 03-74601 and 03-74630 on behalf of petitioners are granted. The motion of the People of the State of CA to interene on behalf of petitioners in 03-74601 03-74630 are granted. Southern Cal Edison's motion to interven in 03-74601 and 03-74630 on behalf of petitioner are granted. The motions of Enron Corp to intervene in 03-74601, 03-74630 and 03-75747 on behalf of respondent are granted. The motions of PG&*E to particiapte as non-aligned intervenor in 03-74601 and 03-74630 are granted. The motion of Mirant Americas Energy Marketing to intervene on behalf of respondent in 03-74617 and 03-74757 is granted. The motions of Reliant Energy Service and Calpine Energy Services for leave to intervene on behalf of respondent in 03-74617 is granted. In view of the conolidation of No. 0374631 with the remainder of the above captioned cases, Morgan Stanley's motion to intervene on behalf of respondent in 03-74617 is denied. The denial is without prejudice to a renewed motion

representing that movant's opening and intervenor briefs would not exceed a total 21,000 words. The motion of the Nevada Bureau of Consumer Protection in 03-74617 and late motions to intervene on behalf of petitioners in 03-74631 and 03-74757 are granted. The motion of the Neveda PUC for leave to intervene on behalf of petitioners in 03-74617 is granted. PG&E motion to participate as non-aligned intervenor in 03-74630 is granted. In view of the consolidation on 03-74208 and 03-74601 with the remainder of the aboe-captioned appeals, PUC's No 1's motion to intervene in 03-74631 is denied. The denied. The denial is without prejudice to a renewed motion representing that movant's opening and intervenor brief would not exceed a total of 21,00 words. If upon review of the opening brief or the answering brief any intervenorr who who has initially been granted intervenor status in support of a party wishes to participate as a nonaligned intervenor may file a brief as a nonaligned intervenor without requesting leave of the court to do so. The litigants are reminded of the court's prefernce for joint briefs. Petitioner's opening brief shall be due 3/8/04. Petitioner-intervenors briefs shall be due 4/7/04. Respondent's brief shall be due 6/7/04. Respondent-

invertenors shall be due 7/7/04. The non-aligned intervenors shall be due 8/6/04. Petitioner's reply brief shall be due 28 days from the service of the last served non-aligned intervenor's brief. Petitioner-intervenors reply brief's reply brief shall be due 42 days from service of the last serve non-aligned invernors's brief. (Motion recvd 12/29/03) [03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757, 03-74798] (wp) [03-74208 03-74601 03-74617 03-74630 03-74631 03-74757 03-74798]

1/23/04 Rcvd amended declaration of service of petitioner's motion for discovery of evidentiary hearing. (MOATT) [03-74208] (wp) [03-74208]

1/26/04 Filed motion and deputy clerk order :(Deputy Clerk: cb) the motions of the Cal Oversight Board to inteverne on behalf of petitioner's in 03-74601, 03-74617 and 03-74630 are granted. The motion of Reliant Energy Services to intervene on behalf of respondent in 03-74617 is granted. The 1/22/04 order continues to govern briefing. (Motion recvd 1/12/04) (wp) [03-74208 03-74223 03-74226 03-74601 03-74617 03-74630 03-74631 03-74757]

1/26/04 Filed Petitioner Public Utility Dist's motion to consolidate lift stay and

suspend time schd order. (MOATT) [03-74208, 03-72511] served on 1/21/04 [4967528] [03-74208, 03-72511] (wp) [03-72511 03-74208]

1/29/04 Filed motion and deputy clerk order: (Deputy Clerk: cb) No. 04-70379 which was transferred to this court from the DC of Columbia Circuit is sua sponte consolidated with the remainder of the above captioned cases. The existing briefing schd remains in place. Pubic Utility District No. 1's motion to intervene in 04-70379 is denied in view of the consolidation of 04-70379 with the petitions filed by movant. (Motion recvd 12/22/04) (wp) [03-74208 03-74601 03-74617 03-74630 03-74631 03-74757 04-70379]

1/29/04 Filed Respondent FERC's response to motion for discovery or for an evidentiary hearing. (MOATT) served on 1/28/04 [03-74208] (wp) [03-74208]

1/30/04 Filed Respondent FERC's response in opposition to motion for discovery or for an evidentiary hearing. (MOATT) served on 1/28/04 [03-74208] (wp) [03-74208]

2/2/04 Filed Petitioner City of Palo Alto's answer of City of Palo Alto CA to FERC's motion to dismiss (MOATT) [4964414-1] served on 1/30/04 [03-

74630, 03-74601, 03-74631] (wp) [03-74208 03-74601 03-74630 03-74631]

2/4/04 Received Intervenor Enron Power letter dated 2/3/04 re: confirming that Enron Power as intervenor to these consolidated cases. [03-74208] (wp) [03-74208]

2/5/04 Filed Petitioner Public Utility Dist consent motion for reconsideration and to sever proceeding. (MOATT) [03-74208, 03-74601, 03-74757, 04-70379] served on 2/4/04 [4973709] [03-74208, 03-74601, 03-74757, 04-70379] (wp) [03-74208 03-74601 03-74757 04-70379]

2/9/04 Filed Petitioner Public Utility Dist's reply in support of motion for discovery. (MOATT) [03-74208] served on 2/6/04 [4974233] [03-74208] (wp) [03-74208]

2/17/04 Filed Intervenor Mirant Americas Engy Mrktng, LP's mtn for voluntary dismissal of No. 04-70379; served 2/13/04. [wip/PROMO] [03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757] (je) [03-74208 03-74601 03-74617 03-74630 03-74631 03-74757]

2/19/04 Filed Petitioner's motion to withdraw petition No. 04-70379 and change status to intervenor in No. 03-74617; served on 02/18/04. [04-70379, 03-

74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757] [4979774] (MOATT) (dktd to include entry in case No. 03-74208) [03-74208] (eu) [03-74208]

3/4/04 Filed order (Deputy Clerk: cb) Petitioner PUD No.1's mtn to sever nos. 03-74601, 03-74630 and 03-74631 from nos. 03-74208, 03-74617 and 03-74757 is granted. Nos. 03-74601, 03-74630 and 03-74631 remain a consolidated group of cases; nos. 03-74208, 03-74617 and 03-74757 remain a group of consolidated cases. Briefing will be reset in no. 03-74208, 03-74617 and 03-74757 upon resolution of the pending mtn served Jan. 16, 2004. The pending mtn to consolidate no. 03-72511 with no. 03-74208 and lift the stay of proceedings in no. 03-72511 will also be addressed by a separate order. Briefing will be reset in nos. 03-74601, 03-74630 and 03-74631 upon resolution of the pending mtn to dismiss. Nos. 04-70415 and 04-70439 are sua sponte consolidated with nos. 03-74601, 03-74630 and 03-74631. The motions of Southern CA Edison, the People of the State of CA, Enron Corp. et al., the City of Santa Clara, and Pacific Gas and Electric for leave to intvn in nos. 04-70415 and 04-70439 are granted. The mtn of Enron Corp, et al., for leave to intvn in no. 04-70439

is granted. The mtn of the Metropolitan Water District for leave to intvn and any response thereto shall be rfr to the merits pnl for resolution. Movant may lodge a proposed brief with the ct. The FRAP 42(b) mtn of Mirant America Energy Mrktng and Morgan Stanley for voluntary dismissal of No. 04-70379 is granted. A certified copy of this order shall serve as and for the mdt of this ct. In view of Morgan Stanley's dismissal of its petition, the mtn for reconsideration of the Jan. 22, 2004 order is granted. Morgan Stanley is granted leave to intvn on behalf of respondent in no. 03-74617. [03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757, 04-70415, 04-70439] (je) [03-74208 03-74601 03-74617 03-74630 03-74631 03-74757 04-70415 04-70439]

3/10/04 Received Petitioner Public Utility Dist letter dated 3/9/04 re: the court re-set the briefing schd. (MOATT) [03-74208] (wp) [03-74208]

4/27/04 Filed order (Diarmuid F. O'SCANNLAIN, Carlos T. BEA): PUD No.1's mtn for discovery and appointment of a special master is denied w/o prejudice to raising these issues in the briefs. The ct consolidates Nos. 03-72511, 03-74208,

03-74617, 03-74757 and 04-70712. The following parties' mtn to intvn are granted or have already been granted; American Electric Power Srvc Corp., as a non-aligned intvnr; CA PUC, on behalf of petitioners: CA Oversight Bd, on behalf of petitioners; NV Bureau of Consumer Protection, on behalf of petitioners; NV PUC, on behalf of petitioners; Allegheny Energy Supply Co. on behalf of respondent; BP Energy Co., on behalf of respondent; Calpine Energy on behalf of respondent; El Paso Merchant Energy on behalf of respondent; Enron Power Mrktng on behalf of respondent; Mirant Americas Energy Mrktng on behalf of respondent; Morgan Stanley on behalf of respondent; and Reliant Energy Srvc on behalf of respondent. The br sch is set as follows: Petitioners' opening briefs are due June 1, 2004. Petitioners-Intvnrs' opening briefs are due July 1, 2004; Respondents' answr brief is due Aug. 2, 2004; Respondent-Intvnrs' answr briefs are due Sept. 2, 2004; the non-aligned intvnr's brief is due Oct. 4, 2004; Petitioner's optional reply briefs are due 14 days after srvc of the non-aligned intvnr's brief; and Petitioners-Intvnrs' optional reply briefs are due 28 days after srvc of the non-aligned inrvnr's brief. The litigants are reminded of the ct's preference for joint

briefs. All other pending mtn are denied as moot. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/2/04 Filed original and 15 copies Petitioner Public Utility Dist in 03-72511, Petitioner Public Utility Dist in 03-74208, Petitioner Nevada Power Company in 03-74617, Petitioner Sierra Pacific Power in 03-74617, Petitioner Southern Cal. Water in 03-74757, Petitioner Attorney General, NV in 04-70712 opening brief (Informal: n) 62 pages and zero excerpts of record; served on 6/1/04. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/2/04 Filed original and 15 copies Petitioner Southern Cal. Water Petitioner in 03-74757 opening brief (Informal: no) 71 pages served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/2/04 Filed original and 15 copies Petitioner Nevada Power Company in 03-74617, Petitioner Sierra Pacific Power in 03-74617 opening brief 65 pages served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-

72511 03-74208 03-74617 03-74757 04-70712]

6/3/04 Filed original and 15 copies Petitioner Public Utility Dist opening brief (Informal: no) 64 pages and five excerpts of record in 7 volumes; served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/8/04 Filed mtn of Petitioner PUD No.1's mtn to supplement the record/request for judicial ntc, any response and any related filings shall be rfr to the merits pnl for resolution. Pursuant to Ninth Cir.R. 27-13, the excerpts of record shall be maintained under seal. (Motion recvd 6/30/04) [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/14/04 Filed Respondent FERC's response to motion to supplemental the record and take judicial notice served on 6/8/04 (MERITS PANEL) [03-74208] (wp) [03-74208]

6/17/04 Filed Intervenor El Paso Merchant's opposition to the motion to supplemental record and take judicail notice (MERITS PANEL) served on 6/17/04 [03-74208, 03-72511, 03-74617,

03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/21/04 Filed Petitioner Public Utility Dist's reply in support of motion to supplement the record and take judicial notice. (MERITS PANEL) served on 6/18/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

8/2/04 Filed mtn of respondent FERC for enlargement of brief size; served 7/30/04. (03-72511, 03-74208, 03-74617, 03-74757, 04-70712) (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

9/1/04 Filed order (App.Comm/ PROMO) A review of respondent's proposed oversize br reveals that it may reasonably be shortened, particularly by eliminating repetition and by shortening the summary of argument. Accordingly, respondent's mtn to for leave to file an oversize br is granted in part. On or before Sept. 22, 2004, respondent shall file a br not to exceed 35,000 words. Respondent-intervenor's br(s) shall be due Oct. 20, 2004. The nonaligned intervenors br(s) shall be due Nov. 17, 2004. Petitioners optional reply br shall be due Dec. 1, 2004. Petitioner-

	intervernors' optional reply br(s) shall be due Dec. 15, 2004. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]
9/23/04	Filed original and 15 copies respondent FERC's 149 pages brief; served on 1/22/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]
9/28/04	Calendar check performed [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (mw) [03-72511 03-74208 03-74617 03-74757 04-70712]
10/4/04	Calendar materials being prepared. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (rei) [03-72511 03-74208 03-74617 03-74757 04-70712]
10/7/04	CALENDARED: Pasadena Dec 8 2004 9:00 a.m. Courtroom 3 [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (th) [03-72511 03-74208 03-74617 03-74757 04-70712]
10/12/04	Filed order (Deputy Clerk: KB) These cases are being placed before the same panel for disposition because they involve issues arising from the California energy crisis. The cases are

not consolidated for oral argument. Csl may wish to confer in order to enhance oral argument. The clerk shall serve a copy of the court's service list for each case on all parties. [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

10/22/04 Rec'd errata to brief from Intervenor Mirant Americas Engy; served 10/21/04. [Faxed to Panel] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

10/29/04 Filed Aples Mirant Americas Dev, Mirant Americas Energy , Mirant Corporation, Mirant Potrero LLC; Mirant Delta LLC; Mirant Investment; Mirant Ca LLC's motion to further stay appellate proceedings and status report regarding Bankruptcy; served on 10/28/04 (faxed to Panel/Pas) [03-56793, 03-72511, 03-72874, 03-73547, 03-74207, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] [5224596] (gva) [03-56793 03-72511

03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/3/04 Filed Aples Reliant Energy Services Inc. et al in No. 03-56793 motion for summary affirmance without argument and alternative motions to strike new conventions and to submit surreply brief; served on 11/3/04 (Panel) (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/3/04 Received original and 15 copies Aples Reliant Energy Services, Inc., et al in No. 03-56793 Surreply brief of 13 pagas; served on 11/3/04 (Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/4/04 FILED 34 VOLUMES OF FERC AGENCY RECORD ON APPEAL [03-74208] [03-74208] (jas) [03-74208]

11/8/04	Filed joint mtn of petitioners, respondents and intervenors regarding oral argument; served 11/08/04. [Faxed to Panel] [03-72511, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
11/15/04	Filed Aplt T&E Pastorino in No. 03-56793 opposition to mtn for summary affirmance without argrment and to alternative motions to strike new contentions and to submit surreply brief; served on (Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872
11/17/04	Filed order (Deputy Clerk: hh) The Petitioners' mtn to supplement the record is GRANTED with respect to the "documents considered by FERC, but omitted from the official administrative record." The Petitioners' mtn to supplement the record is GRANTED with respect to "documents submitted with Snohomish's discovery motion." The

Petitioners' mtn for this Ct to take judicial ntc is GRANTED. [03-72511, 03-74208, 03-74617, 03-74757] (je) [03-72511 03-74208 03-74617 03-74757]

11/17/04 Filed order (Deputy Clerk: hh) In Pub.Util.Dist. No.1 v. FERC, No. 03-72511 (consolidated), the mtn of the parties is GRANTED: Each side is allowed 45 minutes per side for oral argument. The parties are ltd, however, to no more than three attorneys per side. Also, any reply briefs of intvnrs in support of petitioners must be filed on or before Dec. 3, 2004. In Pub.Util.Comm'n v. FERC, no. 03-74207 (consolidated), the mtn of the parties is GRANTED: Each side is allowed 30 minutes per side for oral argument. The parties are ltd, however, to no more than two attorneys per side. Oral argument of these two cases will be heard separately. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74207 03-74208 03-74246 03-74617 03-74757 04-70712]

11/18/04 Filed Aples' letter dated 11/18/04 treated as reply in support of motion for summary affirmance in No. 3-56793 (faxed to Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-

74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/23/04 Filed Unopposed motion of intervenors supporting Respondent to allow counsel for suppliers to each of the Nevada Companies, SCWC and Snohomish respectively to present oral argument; served on 11/23/04 (Faxed to PANEL) [5246347] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (ba) [03-72511 03-74208 03-74617 03-74757 04-70712]

11/29/04 Filed order (Deputy Clerk: hh) The unopposed mtn of intervenors supporting respondent to allow counsel for supplies to each of the Nevada companies, SCWC and Snohomish respectively to present oral arg is DENIED. No party on either side will be permitted more than one attorney to present oral arg. (PHONED COUNSEL) [5246347-1] in 03-72511, 03-74208, 03-74617, 03-74757, 04-70712 [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (gail) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/2/04	Filed original and 15 copies Public Utility Dist in 03-72511, Public Utility Dist in 03-74208 reply brief w/5 suppl joint excerpts of reocrd in 1 vol. (Informal: no) 32 pages; served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt) [03-72511 03-74208 03-74617 03-74757 04-70712]
12/2/04	Filed original and 15 copies Attorney General, NV brief (Informal: no) 31 pages 5 suppl joint excerpts in 1 vol. served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt) [03-72511 03-74208 03-74617 03-74757 04-70712]
12/2/04	Filed Petrs JOINT mtn to take judicial notice; served on 12/1/04. (faxed to PANEL) [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (af) [03-72511 03-74208 03-74617 03-74757 04-70712]
12/2/04	Filed original and 15 copies Southern Cal. Water in 03-74757 reply brief, (Informal: no) 33 pages w/5 suppl joint excerpts of record in 1 vol. served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt) [03-72511 03-74208 03-74617 03-74757 04-70712]
12/3/04	Filed original and 14 copies Nevada

Power Company & Sierra Pacific Power reply brief w/5 suppl joint excertps of record in 1 vol. (Informal: no) 30 pages; served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/3/04 Filed original and 15 copies Public Utility Dist in 03-74208 reply brief, 34 pages; served on 12/2/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712,] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/7/04 Received Petitioners' supplement to joint motion to take judicial ntc; served 12/06/04. [FAXED TO PASADENA CLK FOR DISTRIBUTION TO PANEL] [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/7/04 Received Petitioner Public Utility Dist's 15 copies of page 25 served on 12/6/04 (FAXED to PASADENA) [03-74208] (wp) [03-74208]

12/8/04 ARGUED AND SUBMITTED TO James R. BROWNING, Harry PREGERSON, Marsha S. BERZON [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (pg) [03-72511 03-

74208 03-74617 03-74757 04-70712]

12/13/04 Received Kenneth W. Irvin letter dated 12/10/04 re: at the conclusion of oral argument the panel invited parties to submit a ltr concerning any supplemental points. [Faxed to Panel] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/13/04 Received Petitioner's written response to the Court's final question at oral argument... (PANEL) [03-74208] (wp) [03-74208]

12/16/04 Received Public Utility Dist's additional citations, served on 12/13/04 (PANEL) [03-74208] (wp) [03-74208]

1/18/05 Received Public Utility Dist in 03-74208, PUD No. 1 Snohomish in 03-74207 additional citations, served on 1/12/05 (PANEL) [03-74208, 03-74207] (ft) [03-74207 03-74208]

1/24/05 Filed Intervenor Nevada Power Company joint motion for expedited consideration. (PANEL) [03-74208, 03-74246, 03-74617, 03-74757, 04-70712] served on 1/21/05 [5307278] (wp) [03-74208 03-74246 03-74617 03-74757 04-70712]

2/7/05 Filed Intervenor Enron Power's response to joint motion for expedited

consideration (MOATT) [5307278-1] served on 2/7/05 [03-74208, 03-74207, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-74207 03-74208 03-74246 03-74617 03-74757 04-70712]

3/21/05 Received Public Utility Dist additional citations, served on 3/17/05 (PANEL) [03-74208, 03-74207] (wp) [03-74207 03-74208]

4/22/05 Received Public Utility Dist additional citations, served on 4/19/05 (PANEL) [03-74208] (wp) [03-74208]

8/12/05 Received Public Utility Dist additional citations, served on 8/9/05 [03-74208, 03-72511] (PANEL) (wp) [03-72511 03-74208]

10/7/05 Received revised corporate disclosure statement. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]

12/8/05 Received Public Utility Dist additional citations, served on 12/5/05 (PANEL) [03-74208] (wp) [03-74208]

12/8/05 Received Intervenor Nevada Power Company letter dated 12/7/05 re: hereby provides notice of a settlement with intervenor Morgan Stanley Group (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712]

(wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]

2/6/06 Received Southern California additional citations, served on 2/3/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]

2/6/06 Received Intervenor Nevada Power Company Petitioner Sierra Pacific Power letter dated 2/3/06 re: notice is hereby given of a settlementment with Enron. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757]

2/16/06 Received notice of Suggestion of Bankruptcy of Calpine Energy Services, L.P.; served 02/06/06. [FED EX TO PANEL] (je) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]

6/23/06 Received Public Utility Dist's additional citations, served on 6/19/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]

7/7/06 Received Intervenor Nevada Power Company letter dated 7/5/06 re: Neveda Power and EPM have reach a

	settlement. The settlement has no bearing on the legal issues awaiting resolution by the court. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
8/1/06	Received Public Utility Dist additional citations, served on 7/28/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
12/19/06	FILED OPINION: GRANTED AND REMANDED (Terminated on the Merits after Oral Hearing; Remanded; Written, Signed, Published. James R. BROWNING; Harry PREGERSON; Marsha S. BERZON, author.) FILED AND ENTERED JUDGMENT. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] 2/9/07 in 03-72511, in 03-74208, in 03-74617, in 03-74757, in 04-70712 (ca) [03-72511 03-74208 03-74617 03-74757 04-70712]
1/3/07	Filed Petitioner Public Utility Dist in 03-74208 bill of costs, served on 12/12/06 [03-74208] (wp) [03-74208]
1/8/07	Rcvd petitioner's amended declaration of service of the Bill of costs. [03-74208] (wp) [03-74208]

2/13/07	MANDATE ISSUED [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]
3/12/07	Received letter from the Supreme Court dated 03/08/07 re: ex.tm granted to and including May 3, 2007 in which to file petition for writ of certiorari. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]
3/15/07	Received letter from the Supreme Court dated 03/12/07 re: ex.tm.f petition for writ of certiorari granted to and including May 3, 2007. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74207 03-74208 03-74246 03-74617 03-74757 04-70712]
5/8/07	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-1457. filed on 5/4/07. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (ca) [03-72511 03-74207 03-74208 03-74246 03-74617 03-74757 04-70712]
5/11/07	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-1462 filed on May 3, 2007. [Served Panel] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712]

(je) [03-72511 03-74208 03-74617 03-74757 04-70712]

10/2/07 Received notice from Supreme Court, petition for certiorari GRANTED on 9/25/07. Supreme Court Nos. 06-1457 and 06-1462 are consolidated. (lee) [03-72511 03-74208 03-74617 03-74757 04-70712]

C. Docket No. 03-74617

Date Filed	Docket Text
12/18/03	FILED PETITION FOR REVIEW DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL, NOTIFIED RESPONDENTS OF FILING. Setting schedule as follows: petitioners' opening brief is due 3/8/04, ; respondents' brief is due 4/6/04; petitioner's optional reply brief is due 4/20/04, [03-74617] (ca)
12/18/03	Filed petitioner's Civil Appeals Docketing Statement served on 12/15/03 (to CONFATT) [03-74617] ca)
1/22/04	Filed motion and deputy clerk order: (Deputy Clerk: cb) The clerk sua sponte consolidates Nos. 03-74208, 03-74601, 03-74617, 03-74630, 03-74631 and 03-74757. Respondent's motion for extension of time until 1/12/04 to file the certified index of record for 03-74208 is granted nunc pro tunc. If the indices for any of the above-captioned cases have not been filed, respondent shall do so within 14 days after the date of this order. Mirant's motion to clarify the 12/31/03 order is granted. Court records shall reflect that Mirant intervening in 03-74208 on behalf of respondent The 12/31/03 order is additionally modified to provide that

Calpine Energy Services is intervening on behalf of respondent. The motion of the CA PUC to intervene on behalf of petitioners in all the above-captioned petitions is granted. El Paso Merchant's motion to intervene on behalf of respondent in all the above-captioned petitions is granted. If further petitions are consolidated with the above-captioned petitions the California PUC and El Paso will be deemed intervenors in those cases well. American Electric Power Service Corp's motion to participate in Nos. 03-74208 and 03-74617 as non-aligned intervenor is granted. The motions of the Santa Clara to intervene in 03-74601 and 03-74630 on behalf of petitioners are granted. The motion of the People of the State of CA to intervene on behalf of petitioners in 03-74601 03-74630 are granted. Southern Cal Edison's motion to intervene in 03-74601 and 03-74630 on behalf of petitioner are granted. The motions of Enron Corp to intervene in 03-74601, 03-74630 and 03-75747 on behalf of respondent are granted. The motions of PG&E to participate as non-aligned intervenor in 03-74601 and 03-74630 are granted. The motion of Mirant Americas Energy Marketing to intervene on behalf of respondent in 03-74617 and 03-74757 is granted. The motions of Reliant Energy Service and

Calpine Energy Services for leave to intervene on behalf of respondent in 03-74617 is granted. In view of the consolidation of No. 0374631 with the remainder of the above captioned cases, Morgan Stanley's motion to intervene on behalf of respondent in 03-74617 is denied. The denial is without prejudice to a renewed motion representing that movant's opening and intervenor briefs would not exceed a total 21,000 words. The motion of the Nevada Bureau of Consumer Protection in 03-74617 and late motions to intervene on behalf of petitioners in 03-74631 and 03-74757 are granted. The motion of the Nevada PUC for leave to intervene on behalf of petitioners in 03-74617 is granted. PG&E motion to participate as non-aligned intervenor in 03-74630 is granted. In view of the consolidation on 03-74208 and 03-74601 with the remainder of the above-captioned appeals, PUC's No 1's motion to intervene in 03-74631 is denied. The denied. The denial is without prejudice to a renewed motion representing that movant's opening and intervenor brief would not exceed a total of 21,00 words. If upon review of the opening brief or the answering brief any intervenor who has initially been granted intervenor status in support of a party wishes to participate as a

nonaligned intervenor may file a brief as a nonaligned intervenor without requesting leave of the court to do so. The litigants are reminded of the court's preference for joint briefs. Petitioner's opening brief shall be due 3/8/04. Petitioner-intervenors briefs shall be due 4/7/04. Respondent's brief shall be due 6/7/04. Respondent-intervenors shall be due 7/7/04. The non-aligned intervenors shall be due 8/6/04. Petitioner's reply brief shall be due 28 days from the service of the last served non-aligned intervenor's brief. Petitioner-intervenors reply brief's reply brief shall be due 42 days from service of the last serve non-aligned intervenors' brief. (Motion recvd 12/29/03) [03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757, 03-74798] (wp)

1/26/04 Filed motion and deputy clerk order: (Deputy Clerk: cb) the motions of the Cal Oversight Board to intervene on behalf of petitioner's in 03-74601, 03-74617 and 03-74630 are granted. The motion of Reliant Energy Services to intervene on behalf of respondent in 03-74617 is granted. The 1/22/04 order continues to govern briefing. (Motion rec'vd 1/12/04) (wp) [03-74208 03-74223 03-74226 03-74601 03-74617 03-74630 03-74631 03-74757]

1/29/04	Filed motion and deputy clerk order :(Deputy Clerk: cb) No. 04-70379 which was transferred to this court from the DC of Columbia Circuit is sua sponte consolidated with the remainder of the above captioned cases. The existing briefing schd remains in place. Pubic Utility District No. 1's motion to intervene in 04-70379 is denied in view of the consolidation of 04-70379 with the petitions filed by Movant. (Motion recvd 12/22/04) (wp) [03-74208 03-74601 03-74617 03-74630 03-74631 03-74757 04-70379]
2/17/04	Filed Intervenor Mirant Americas Engy Mrktng, LP's mtn for voluntary dismissal of No. 04-70379; served 2/13/04. [wip/PROMO] [03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757] (je)
2/19/04	Filed Petitioner Morgan Stanley's motion to withdraw petition No. 04-70379 and change status to intervenor in 03-74617; served on 02/18/04. [04-70379, 03-74208, 03-74601, 03-74617, 03-74631, 03-74757] [4979774] (MOATT) (dv)
3/4/04	Filed motion of intervene and deputy clerk order :(Deputy Clerk:) (Motion recvd) [03-72511, 04-70415, 04-70439] (je) [03-74617]

3/4/04	Filed order (Deputy Clerk: cb) [03-72511, 03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757, 04-70415, 04-70439] (je) [03-74617]
3/4/04	Filed order (Deputy Clerk: cb) Petitioner PUD No.1's mtn to sever nos. 03-74601, 03-74630 and 03-74631 from nos. 03-74208, 03-74617 and 03-74757 is granted. Nos. 03-74601, 03-74630 and 03-74631 remain a consolidated group of cases; nos. 03-74208, 03-74617 and 03-74757 remain a group of consolidated cases. Briefing will be reset in no. 03-74208, 03-74617 and 03-74757 upon resolution of the pending mtn served Jan. 16, 2004. The pending mtn to consolidate no. 03-72511 with no. 03-74208 and lift the stay of proceedings in no. 03-72511 will also be addressed by a separate order. Briefing will be reset in nos. 03-74601, 03-74630 and 03-74631 upon resolution of the pending mtn to dismiss. Nos. 04-70415 and 04-70439 are sua sponte consolidated with nos. 03-74601, 03-74630 and 03-74631. The motions of Southern CA Edison, the People of the State of CA, Enron Corp. et al., the City of Santa Clara, and Pacific Gas and Electric for leave to intvn in nos. 04-70415 and 04-70439 are granted. The mtn of Enron Corp, et al., for leave to intvn in no. 04-70439 is

granted. The mtn of the Metropolitan Water District for leave to intvn and any response thereto shall be rfr to the merits pnl for resolution. Movant may lodge a proposed brief with the ct. The FRAP 42(b) mtn of Mirant America Energy Mrktng and Morgan Stanley for voluntary dismissal of No. 04-70379 is granted. A certified copy of this order shall serve as and for the mdt of this ct. In view of Morgan Stanley's dismissal of its petition, the mtn for reconsideration of the Jan. 22, 2004 order is granted. Morgan Stanley is granted leave to intvn on behalf of respondent in no. 03-74617. [03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757, 04-70415, 04-70439] (je) [03-74208 03-74601 03-74617 03-74630 03-74631 03-74757 04-70415 04-70439]

3/19/04 Received Intervenor Enron Power in 03-74653's motion to correct case designation of prior motion to intervene of Enron Power; ; served on 1/12/04 [5014623] (No action Necessary per promo- CASE FILE) [03-74617, 03-74653] (ft) [03-74617 03-74653]

4/27/04 Filed order (Diarmuid F. O'SCANNLAIN, Carlos T. BEA): PUD No.1's mtn for discovery and appointment of a special master is

denied w/o prejudice to raising these issues in the briefs. The ct consolidates Nos. 03-72511, 03-74208, 03-74617, 03-74757 and 04-70712. The following parties' mtn to intvn are granted or have already been granted; American Electric Power Srvc Corp., as a non-aligned intvnr; CA PUC, on behalf of petitioners: CA Oversight Bd, on behalf of petitioners; NV Bureau of Consumer Protection, on behalf of petitioners; NV PUC, on behalf of petitioners; Allegheny Energy Supply Co. on behalf of respondent; BP Energy Co., on behalf of respondent; Calpine Energy on behalf of respondent; El Paso Merchant Energy on behalf of respondent; Enron Power Mrktng on behalf of respondent; Mirant Americas Energy Mrktng on behalf of respondent; Morgan Stanley on behalf of respondent; and Reliant Energy Srvc on behalf of respondent. The br sch is set as follows: Petitioners' opening briefs are due June 1, 2004. Petitioners-Intvnrs' opening briefs are due July 1, 2004; Respondents' answr brief is due Aug. 2, 2004; Respondent-Intvnrs' answr briefs are due Sept. 2, 2004; the non-aligned intvnr's brief is due Oct. 4, 2004; Petitioner's optional reply briefs are due 14 days after srvc of the non-aligned intvnr's brief; and Petitioners-Intvnrs' optional reply briefs are due

28 days after srvc of the non-aligned intvnr's brief. The litigants are reminded of the ct's preference for joint briefs. All other pending mtn are denied as moot. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)

6/2/04 Filed original and 15 copies Petitioner Public Utility Dist in 03-72511, Petitioner Public Utility Dist in 03-74208, Petitioner Nevada Power Company in 03-74617, Petitioner Sierra Pacific Power in 03-74617, Petitioner Southern Cal. Water in 03-74757, Petitioner Attorney General, NV in 04-70712 opening brief (Informal: n) 62 pages and zero excerpts of record; served on 6/1/04. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)

6/2/04 Filed original and 15 copies Petitioner Southern Cal. Water Petitioner in 03-74757 opening brief (Informal: no) 71 pages served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)

6/2/04 Filed original and 15 copies Petitioner Nevada Power Company in 03-74617, Petitioner Sierra Pacific Power in 03-74617 opening brief 65 pages served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)

6/3/04	Filed original and 15 copies Petitioner Public Utility Dist opening brief (Informal: no) 64 pages and five excerpts of record in 7 volumes; served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)
6/8/04	Filed original and 15 copies Petitioner Public Utility Dist opening brief (Informal: no) 64 pages and five excerpts of record in 7 volumes; served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)
6/17/04	Filed Intervenor El Paso Merchant's opposition to the motion to supplemental record and take judicial notice (MERITS PANEL) served on 6/17/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)
6/21/04	Filed Petitioner Public Utility Dist's reply in support of motion to supplement the record and take judicial notice. (MERITS PANEL) served on 6/18/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)
8/02/04	Filed mtn of respondent FERC for enlargement of brief size; served 7/30/04. (03-72511, 03-74208, 03-74617, 03-74757, 04-70712) (je)
9/01/04	Filed order (App.Comm/PROMO) A review of respondent's proposed

	oversize br reveals that it may reasonably be shortened, particularly by eliminating repetition and by shortening the summary of argument. Accordingly, respondent's mtn to for leave to file an oversize br is granted in part. On or before Sept. 22, 2004, respondent shall file a br not to exceed 35,000 words. Respondent-intervenor's br(s) shall be due Oct. 20, 2004. The nonaligned intervenors br(s) shall be due Nov. 17, 2004. Petitioners optional reply br shall be due Dec. 1, 2004. Petitioner-intervernors' optional reply br(s) shall be due Dec. 15, 2004. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)
9/23/04	Filed original and 15 copies respondent FERC's 149 pages brief; served on 1/22/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)
9/28/04	Calendar check performed [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (mw)
10/04/04	Calendar materials being prepared. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (rei)
10/07/04	CALENDARED: Pasadena Dec 8 2004 9:00 a.m. Courtroom 3 [03-72511, 03-

74208, 03-74617, 03-74757, 04-70712] (th)

10/12/04 Filed order (Deputy Clerk: KB) These cases are being placed before the same panel for disposition because they involve issues arising from the California energy crisis. The cases are not consolidated for oral argument. Csl may wish to confer in order to enhance oral argument. The clerk shall serve a copy of the court's service list for each case on all parties. [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva)

10/22/04 Rec'd errata to brief from Intervenor Mirant Americas Engy; served 10/21/04. [Faxed to Panel] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

10/29/04 Filed Aples Mirant Americas Dev, Mirant Americas Energy , Mirant Corporation, Mirant Potrero LLC; Mirant Delta LLC; Mirant Investment; Mirant Ca LLC's motion to further stay appellate proceedings and status report regarding Bankruptcy; served on 10/28/04 (faxed to Panel/Pas) [03-56793, 03-72511, 03-72874, 03-73547, 03-74207, 03-74617, 03-74757, 04-

70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] [5224596] (gva)

11/03/04 Filed Aples Reliant Energy Services Inc. et al in No. 03-56793 motion for summary affirmance without argument and alternative motions to strike new conventions and to submit surreply brief; served on 11/3/04 (Panel) (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/03/04 Received original and 15 copies Aples Reliant Energy Services, Inc., et al in No. 03-56793 Surreply brief of 13 pages; served on 11/3/04 (Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva)

11/08/04 Filed joint mtn of petitioners, respondents and intervenors regarding oral argument; served 11/08/04. [Faxed to Panel] [03-72511, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je)

11/15/04 Filed Aplt T&E Pastorino in No. 03-56793 opposition to mtn for summary

affirmance without argument and to alternative motions to strike new contentions and to submit surreply brief; served on (Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva)

11/17/04 Filed order (Deputy Clerk: hh) The Petitioners' mtn to supplement the record is GRANTED with respect to the "documents considered by FERC, but omitted from the official administrative record." The Petitioners' mtn to supplement the record is GRANTED with respect to "documents submitted with Snohomish's discovery motion." The Petitioners' mtn for this Ct to take judicial ntc is GRANTED. [03-72511, 03-74208, 03-74617, 03-74757] (je)

11/17/04 Filed order (Deputy Clerk: hh) In Pub.Util.Dist. No. 1 v. FERC, No. 03-72511 (consolidated), the mtn of the parties is GRANTED: Each side is allowed 45 minutes per side for oral argument. The parties are ltd, however, to no more than three attorneys per side. Also, any reply briefs of intvnrs in support of petitioners must be filed on or before Dec. 3, 2004. In Pub. Util. Comm'n v.

FERC, no. 03-74207 (consolidated), the mtn of the parties is GRANTED: Each side is allowed 30 minutes per side for oral argument. The parties are ltd, however, to no more than two attorneys per side. Oral argument of these two cases will be heard separately. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je)

11/18/04 Filed Aples' letter dated 11/18/04 treated as reply in support of motion for summary affirmance in No. 3-56793 (faxed to Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva)

11/23/04 Filed Unopposed motion of intervenors supporting Respondent to allow counsel for suppliers to each of the Nevada Companies, SCWC and Snohomish respectively to present oral argument; served on 11/23/04 (Faxed to PANEL) [5246347] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (ba)

11/29/04 Filed order (Deputy Clerk: hh) The unopposed mtn of intervenors supporting respondent to allow counsel for supplies to each of the Nevada

companies, SCWC and Snohomish respectively to present oral arg is DENIED. No party on either side will be permitted more than one attorney to present oral arg. (PHONED COUNSEL) [5246347-1] in 03-72511, 03-74208, 03-74617, 03-74757, 04-70712 [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (gail)

12/02/04 Filed original and 15 copies Public Utility Dist in 03-72511, Public Utility Dist in 03-74208 reply brief w/5 suppl joint excerpts of record in 1 vol. (Informal: no) 32 pages; served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt)

12/02/04 Filed original and 15 copies Attorney General, NV brief (Informal: no) 31 pages 5 suppl joint excerpts in 1 vol. served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt)

12/02/04 Filed Petrs JOINT mtn to take judicial notice; served on 12/1/04. (faxed to PANEL) [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (af)

12/02/04 Filed original and 15 copies Southern Cal. Water in 03-74757 reply brief, (Informal: no) 33 pages w/5 suppl joint excerpts of record in 1 vol. served on 12/1/04 PANEL [03-72511, 03-74208,

03-74617, 03-74757, 04-70712] (vt)

12/03/04 Filed original and 14 copies Nevada Power Company & Sierra Pacific Power reply brief w/5 suppl joint excerpts of record in 1 vol. (Informal: no) 30 pages; served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt)

12/03/04 Filed original and 15 copies Public Utility Dist in 03-74208 reply brief, 34 pages; served on 12/2/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712,] (wp)

12/07/04 Received Petitioners' supplement to joint motion to take judicial ntc; served 12/06/04. [FAXED TO PASADENA CLK FOR DISTRIBUTION TO PANEL] [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (je)

12/08/04 ARGUED AND SUBMITTED TO James R. BROWNING, Harry PREGERSON, Marsha S. BERZON [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (pg)

12/13/04 Received Kenneth W. Irvin letter dated 12/10/04 re: at the conclusion of oral argument the panel invited parties to submit a ltr concerning any supplemental points. [Faxed to Panel] [03-72511, 03-74208, 03-74617, 03-

74757, 04-70712] (je)

1/24/05 Filed Intervenor Nevada Power Company joint motion for expedited consideration. (PANEL) [03-74208, 03-74246, 03-74617, 03-74757, 04-70712] served on 1/21/05 [5307278] (wp)

2/07/05 Filed Intervenor Enron Power's response to joint motion for expedited consideration (MOATT) [5307278-1] served on 2/7/05 [03-74208, 03-74207, 03-74246, 03-74617, 03-74757, 04-70712] (wp)

10/07/05 Received revised corporate disclosure statement. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)

12/08/05 Received Intervenor Nevada Power Company letter dated 12/7/05 re: hereby provides notice of a settlement with intervenor Morgan Stanley Group (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)

2/06/06 Received Southern California additional citations, served on 2/3/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)

2/06/06 Received Intervenor Nevada Power Company Petitioner Sierra Pacific

	Power letter dated 2/3/06 re: notice is hereby given of a settlement with Enron. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757] (wp)
2/16/06	Received notice of Suggestion of Bankruptcy of Calpine Energy Services, L.P.; served 02/06/06. [FED EX TO PANEL] (je) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
6/23/06	Received Public Utility Dist's additional citations, served on 6/19/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
7/07/06	Received Intervenor Nevada Power Company letter dated 7/5/06 re: Nevada Power and EPM have reach a settlement. The settlement has no bearing on the legal issues awaiting resolution by the court. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
8/01/06	Received Public Utility Dist additional citations, served on 7/28/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
12/19/06	FILED OPINION: GRANTED AND REMANDED (Terminated on the Merits after Oral Hearing; Remanded; Written, Signed, Published. James R.

BROWNING; Harry PREGERSON; Marsha S. BERZON, author.) FILED AND ENTERED JUDGMENT. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] 2/9/07 in 03-72511, in 03-74208, in 03-74617, in 03-74757, in 04-70712 (ca)

2/13/07 MANDATE ISSUED [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)

3/12/07 Received letter from the Supreme Court dated 03/08/07 re: ex.tm granted to and including May 3, 2007 in which to file petition for writ of certiorari. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)

3/15/07 Received letter from the Supreme Court dated 03/12/07 re: ex.tm.f petition for writ of certiorari granted to and including May 3, 2007. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je)

5/08/07 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-1457. filed on 5/4/07. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (ca)

5/11/07 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-1462 filed on May 3, 2007. [Served Panel] [03-72511, 03-

74208, 03-74617, 03-74757, 04-70712] (je)

10/02/07 Received notice from Supreme Court, petition for certiorari GRANTED on 9/25/07. Supreme Court Nos. 06-1457 and 06-1462 are consolidated. (lee) [03-72511 03-74208 03-74617 03-74757 04-70712]

D. Docket No. 03-74757

Date Filed	Docket Text
12/17/03	FILED PETITION FOR REVIEW DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL, NOTIFIED RESPONDENTS OF FILING, The briefing schedule as follows: petitioners' opening brief is due 3/8/04; respondents' brief is due 4/5/04; petitioner's optional reply brief is due 4/19/04. [03-74757] (we)
12/17/03	Filed Randolph Lee Elliot for Petitioner Southern Cal. Water Civil Appeals Docketing Statement served on 12/16/03 (to CONFATT) [03-74757] (wp)
1/22/04	Filed motion and deputy clerk order :(Deputy Clerk: cb) The clerk sua sponte consolidates Nos. 03-74208, 03-74601, 03-74617, 03-74630, 03-74631 and 03-74757. Respondent's motion for extension of time until 1/12/04 to file the certified index of record for 03-74208 is granted nunc pro tunc. If the indices for any of the above-captioned cases have not been filed, respondent shall do so within 14 days after the date of this order. Mirant's motion to clarify the 12/31/03 order is granted. Court records shall reflect that Mirant intervening in 03-74208 on behalf of

respondent The 12/31/03 order is additionally modified to provide that Calpine Energy Services is intervening on behalf of respondent. The motion of the CA PUC to intervene on behalf of petitioners in all the above-captioned petitions is granted. El Paso Merchant's motion to intervene on behalf of respondent in all the above-captioned petitions is granted. If further petitions are consolidated with the above-captioned petitions the California PUC and El Paso will be deemed intervenors in those cases well. American Electric Power Service Corp's motion to participate in Nos. 03-74208 and 03-74617 as non-aligned intervenor is granted. The motions of the Santa Clara to intervene in 03-74601 and 03-74630 on behalf of petitioners are granted. The motion of the People of the State of CA to intervene on behalf of petitioners in 03-74601 03-74630 are granted. Southern Cal Edison's motion to intervene in 03-74601 and 03-74630 on behalf of petitioner are granted. The motions of Enron Corp to intervene in 03-74601, 03-74630 and 03-75747 on behalf of respondent are granted. The motions of PG&E to participate as non-aligned intervenor in 03-74601 and 03-74630 are granted. The motion of Mirant Americas Energy Marketing to intervene on behalf of respondent in

03-74617 and 03-74757 is granted. The motions of Reliant Energy Service and Calpine Energy Services for leave to intervene on behalf of respondent in 03-74617 is granted. In view of the consolidation of No. 0374631 with the remainder of the above captioned cases, Morgan Stanley's motion to intervene on behalf of respondent in 03-74617 is denied. The denial is without prejudice to a renewed motion representing that movant's opening and intervenor briefs would not exceed a total 21,000 words. The motion of the Nevada Bureau of Consumer Protection in 03-74617 and late motions to intervene on behalf of petitioners in 03-74631 and 03-74757 are granted. The motion of the Nevada PUC for leave to intervene on behalf of petitioners in 03-74617 is granted. PG&E motion to participate as non-aligned intervenor in 03-74630 is granted. In view of the consolidation on 03-74208 and 03-74601 with the remainder of the above-captioned appeals, PUC's No 1's motion to intervene in 03-74631 is denied. The denied. The denial is without prejudice to a renewed motion representing that movant's opening and intervenor brief would not exceed a total of 21,00 words. If upon review of the opening brief or the answering brief any intervenor who has initially been

granted intervenor status in support of a party wishes to participate as a nonaligned intervenor may file a brief as a nonaligned intervenor without requesting leave of the court to do so. The litigants are reminded of the court's preference for joint briefs. Petitioner's opening brief shall be due 3/8/04. Petitioner-intervenors briefs shall be due 4/7/04. Respondent's brief shall be due 6/7/04. Respondent-intervenors shall be due 7/7/04. The non-aligned intervenors shall be due 8/6/04. Petitioner's reply brief shall be due 28 days from the service of the last served non-aligned intervenor's brief. Petitioner-intervenors reply brief's reply brief shall be due 42 days from service of the last serve non-aligned intervenors' brief. (Motion recvd 12/29/03) [03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757, 03-74798] (wp)

1/26/04 Filed motion and deputy clerk order :(Deputy Clerk: cb) the motions of the Cal Oversight Board to intervene on behalf of petitioner's in 03-74601, 03-74617 and 03-74630 are granted. The motion of Reliant Energy Services to intervene on behalf of respondent in 03-74617 is granted. The 1/22/04 order continues to govern briefing. (Motion recvd 1/12/04) (wp)

1/29/04	Filed motion and deputy clerk order :(Deputy Clerk: cb) the motions of the Cal Oversight Board to intervene on behalf of petitioner's in 03-74601, 03-74617 and 03-74630 are granted. The motion of Reliant Energy Services to intervene on behalf of respondent in 03-74617 is granted. The 1/22/04 order continues to govern briefing. (Motion recvd 1/12/04) (wp) [03-74208 03-74223 03-74226 03-74601 03-74617 03-74630 03-74631 03-74757]
2/5/04	Filed Petitioner Public Utility Dist consent motion for reconsideration and to sever proceeding. (MOATT) [03-74208, 03-74601, 03-74757, 04-70379] served on 2/4/04 (wp)
2/17/04	Filed Intervenor Mirant Americas Engy Mrktng, LP's mtn for voluntary dismissal of No. 04-70379; served 2/13/04. [wip/PROMO] [03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757] (je)
2/19/04	Filed Petitioner Morgan Stanley's motion to withdraw petition No. 04-70379 and change status to intervenor in 03-74617; served on 02/18/04. [04-70379, 03-74208, 03-74601, 03-74617, 03-74631, 03-74757] [4979774] (MOATT) (dv)
3/4/04	Filed order (Deputy Clerk: cb)

Petitioner PUD No.1's mtn to sever nos. 03-74601, 03-74630 and 03-74631 from nos. 03-74208, 03-74617 and 03-74757 is granted. Nos. 03-74601, 03-74630 and 03-74631 remain a consolidated group of cases; nos. 03-74208, 03-74617 and 03-74757 remain a group of consolidated cases. Briefing will be reset in no. 03-74208, 03-74617 and 03-74757 upon resolution of the pending mtn served Jan. 16, 2004. The pending mtn to consolidate no. 03-72511 with no. 03-74208 and lift the stay of proceedings in no. 03-72511 will also be addressed by a separate order. Briefing will be reset in nos. 03-74601, 03-74630 and 03-74631 upon resolution of the pending mtn to dismiss. Nos. 04-70415 and 04-70439 are sua sponte consolidated with nos. 03-74601, 03-74630 and 03-74631. The motions of Southern CA Edison, the People of the State of CA, Enron Corp. et al., the City of Santa Clara, and Pacific Gas and Electric for leave to intvn in nos. 04-70415 and 04-70439 are granted. The mtn of Enron Corp, et al., for leave to intvn in no. 04-70439 is granted. The mtn of the Metropolitan Water District for leave to intvn and any response thereto shall be rfr to the merits pnl for resolution. Movant may lodge a proposed brief with the ct. The FRAP 42(b) mtn of Mirant America Energy Mrktng and Morgan Stanley

for voluntary dismissal of No. 04-70379 is granted. A certified copy of this order shall serve as and for the mdt of this ct. In view of Morgan Stanley's dismissal of its petition, the mtn for reconsideration of the Jan. 22, 2004 order is granted. Morgan Stanley is granted leave to intvn on behalf of respondent in no. 03-74617. [03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757, 04-70415, 04-70439] (je)

4/27/04 Filed order (Diarmuid F. O'SCANNLAIN, Carlos T. BEA): PUD No.1's mtn for discovery and appointment of a special master is denied w/o prejudice to raising these issues in the briefs. The ct consolidates Nos. 03-72511, 03-74208, 03-74617, 03-74757 and 04-70712. The following parties' mtn to intvn are granted or have already been granted; American Electric Power Srvc Corp., as a non-aligned intvnr; CA PUC, on behalf of petitioners: CA Oversight Bd, on behalf of petitioners; NV Bureau of Consumer Protection, on behalf of petitioners; NV PUC, on behalf of petitioners; Allegheny Energy Supply Co. on behalf of respondent; BP Energy Co., on behalf of respondent; Calpine Energy on behalf of respondent; El Paso Merchant Energy on behalf of respondent; Enron Power

Mrktng on behalf of respondent; Mirant Americas Energy Mrktng on behalf of respondent; Morgan Stanley on behalf of respondent; and Reliant Energy Srvc on behalf of respondent. The br sch is set as follows: Petitioners' opening briefs are due June 1, 2004. Petitioners-Intvnrs' opening briefs are due July 1, 2004; Respondents' answr brief is due Aug. 2, 2004; Respondent-Intvnrs' answr briefs are due Sept. 2, 2004; the non-aligned intvnr's brief is due Oct. 4, 2004; Petitioner's optional reply briefs are due 14 days after srvc of the non-aligned intvnr's brief; and Petitioners-Intvnrs' optional reply briefs are due 28 days after srvc of the non-aligned intvnr's brief. The litigants are reminded of the ct's preference for joint briefs. All other pending mtn are denied as moot. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)

6/2/04 Filed original and 15 copies Petitioner Public Utility Dist in 03-72511, Petitioner Public Utility Dist in 03-74208, Petitioner Nevada Power Company in 03-74617, Petitioner Sierra Pacific Power in 03-74617, Petitioner Southern Cal. Water in 03-74757, Petitioner Attorney General, NV in 04-70712 opening brief (Informal: n) 62 pages and zero excerpts of record; served on 6/1/04.

[03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)

6/2/04 Filed original and 15 copies Petitioner Southern Cal. Water Petitioner in 03-74757 opening brief (Informal: no) 71 pages served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)

6/2/04 Filed original and 15 copies Petitioner Nevada Power Company in 03-74617, Petitioner Sierra Pacific Power in 03-74617 opening brief 65 pages served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)

6/3/04 Filed original and 15 copies Petitioner Public Utility Dist opening brief (Informal: no) 64 pages and five excerpts of record in 7 volumes; served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)

6/8/04 Filed mtn of Petitioner PUD No.1's mtn to supplement the record/request for judicial ntc, any response and any related filings shall be rfr to the merits pnl for resolution. Pursuant to Ninth Cir.R. 27-13, the excerpts of record shall be maintained under seal. (Motion recvd 6/30/04) [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)

6/17/04	Filed Intervenor El Paso Merchant's opposition to the motion to supplemental record and take judicial notice (MERITS PANEL) served on 6/17/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)
6/21/04	Filed Petitioner Public Utility Dist's reply in support of motion to supplement the record and take judicial notice. (MERITS PANEL) served on 6/18/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)
8/2/04	Filed mtn of respondent FERC for enlargement of brief size; served 7/30/04. (03-72511, 03-74208, 03-74617, 03-74757, 04-70712) (je)
9/1/04	Filed order (App.Comm/PROMO) A review of respondent's proposed oversize br reveals that it may reasonably be shortened, particularly by eliminating repetition and by shortening the summary of argument. Accordingly, respondent's mtn to for leave to file an oversize br is granted in part. On or before Sept. 22, 2004, respondent shall file a br not to exceed 35,000 words. Respondent-intervenor's br(s) shall be due Oct. 20, 2004. The nonaligned intervenors br(s) shall be due Nov. 17, 2004. Petitioners optional reply br shall be due Dec. 1, 2004. Petitioner-intervernors' optional reply

	br(s) shall be due Dec. 15, 2004. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)
9/23/04	Filed original and 15 copies respondent FERC's 149 pages brief; served on 1/22/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp)
9/28/04	Calendar check performed [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (mw)
10/4/04	Calendar materials being prepared. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (rei)
10/7/04	CALENDARED: Pasadena Dec 8 2004 9:00 a.m. Courtroom 3 [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (th)
10/12/04	Filed order (Deputy Clerk: KB) These cases are being placed before the same panel for disposition because they involve issues arising from the California energy crisis. The cases are not consolidated for oral argument. Csl may wish to confer in order to enhance oral argument. The clerk shall serve a copy of the court's service list for each case on all parties. [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427,

04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva)

10/22/04 Rec'd errata to brief from Intervenor Mirant Americas Engy; served 10/21/04. [Faxed to Panel] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

10/29/04 Filed Aples Mirant Americas Dev, Mirant Americas Energy , Mirant Corporation, Mirant Potrero LLC; Mirant Delta LLC; Mirant Investment; Mirant Ca LLC's motion to further stay appellate proceedings and status report regarding Bankruptcy; served on 10/28/04 (faxed to Panel/Pas) [03-56793, 03-72511, 03-72874, 03-73547, 03-74207, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] [5224596] (gva)

11/3/04 Filed Aples Reliant Energy Services Inc. et al in No. 03-56793 motion for summary affirmance without argument and alternative motions to strike new conventions and to submit surreply brief; served on 11/3/04 (Panel) (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/3/04	Received original and 15 copies Aples Reliant Energy Services, Inc., et al in No. 03-56793 Surreply brief of 13 pages; served on 11/3/04 (Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva)
11/8/04	Filed joint mtn of petitioners, respondents and intervenors regarding oral argument; served 11/08/04. [Faxed to Panel] [03-72511, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je)
11/15/04	Filed Aplt T&E Pastorino in No. 03-56793 opposition to mtn for summary affirmance without argument and to alternative motions to strike new contentions and to submit surreply brief; served on (Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva)
11/17/04	Filed order (Deputy Clerk: hh) The Petitioners' mtn to supplement the record is GRANTED with respect to the "documents considered by FERC, but omitted from the official administrative record." The

Petitioners' mtn to supplement the record is GRANTED with respect to "documents submitted with Snohomish's discovery motion." The Petitioners' mtn for this Ct to take judicial ntc is GRANTED. [03-72511, 03-74208, 03-74617, 03-74757] (je)

11/17/04 Filed order (Deputy Clerk: hh) In Pub.Util.Dist. No. 1 v. FERC, No. 03-72511 (consolidated), the mtn of the parties is GRANTED: Each side is allowed 45 minutes per side for oral argument. The parties are ltd, however, to no more than three attorneys per side. Also, any reply briefs of intvnrs in support of petitioners must be filed on or before Dec. 3, 2004. In Pub. Util. Comm'n v. FERC, no. 03-74207 (consolidated), the mtn of the parties is GRANTED: Each side is allowed 30 minutes per side for oral argument. The parties are ltd, however, to no more than two attorneys per side. Oral argument of these two cases will be heard separately. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je)

11/18/04 Filed Aples' letter dated 11/18/04 treated as reply in support of motion for summary affirmance in No. 3-56793 (faxed to Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547,

03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva)

11/23/04 Filed Unopposed motion of intervenors supporting Respondent to allow counsel for suppliers to each of the Nevada Companies, SCWC and Snohomish respectively to present oral argument; served on 11/23/04 (Faxed to PANEL) [5246347] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (ba)

11/29/04 Filed order (Deputy Clerk: hh) The unopposed mtn of intervenors supporting respondent to allow counsel for supplies to each of the Nevada companies, SCWC and Snohomish respectively to present oral arg is DENIED. No party on either side will be permitted more than one attorney to present oral arg. (PHONED COUNSEL) [5246347-1] in 03-72511, 03-74208, 03-74617, 03-74757, 04-70712 [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (gail)

12/2/04 Filed original and 15 copies Public Utility Dist in 03-72511, Public Utility Dist in 03-74208 reply brief w/5 suppl joint excerpts of record in 1 vol. (Informal: no) 32 pages; served on 12/1/04 PANEL [03-72511, 03-74208,

03-74617, 03-74757, 04-70712] (vt)

12/02/04 Filed original and 15 copies Public Utility Dist in 03-72511, Public Utility Dist in 03-74208 reply brief w/5 suppl joint excerpts of record in 1 vol. (Informal: no) 32 pages; served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt)

12/02/04 Filed original and 15 copies Attorney General, NV brief (Informal: no) 31 pages 5 suppl joint excerpts in 1 vol. served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt)

12/02/04 Filed Petrs JOINT mtn to take judicial notice; served on 12/1/04. (faxed to PANEL) [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (af)

12/02/04 Filed original and 15 copies Southern Cal. Water in 03-74757 reply brief, (Informal: no) 33 pages w/5 suppl joint excerpts of record in 1 vol. served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt)

12/03/04 Filed original and 14 copies Nevada Power Company & Sierra Pacific Power reply brief w/5 suppl joint excerpts of record in 1 vol. (Informal: no) 30 pages; served on 12/1/04 PANEL [03-72511, 03-74208, 03-

74617, 03-74757, 04-70712] (vt)

12/3/04 Filed original and 15 copies Public Utility Dist in 03-74208 reply brief, 34 pages; served on 12/2/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712,] (wp)

12/7/04 Received Petitioners' supplement to joint motion to take judicial ntc; served 12/06/04. [FAXED TO PASADENA CLK FOR DISTRIBUTION TO PANEL] [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (je)

12/8/04 ARGUED AND SUBMITTED TO James R. BROWNING, Harry PREGERSON, Marsha S. BERZON [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (pg)

12/13/04 Received Kenneth W. Irvin letter dated 12/10/04 re: at the conclusion of oral argument the panel invited parties to submit a ltr concerning any supplemental points. [Faxed to Panel] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)

1/24/05 Filed Intervenor Nevada Power Company joint motion for expedited consideration. (PANEL) [03-74208, 03-74246, 03-74617, 03-74757, 04-70712] served on 1/21/05 [5307278] (wp)

2/07/05	Filed Intervenor Enron Power's response to joint motion for expedited consideration (MOATT) [5307278-1] served on 2/7/05 [03-74208, 03-74207, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
10/07/05	Received revised corporate disclosure statement. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
12/08/05	Received Intervenor Nevada Power Company letter dated 12/7/05 re: hereby provides notice of a settlement with intervenor Morgan Stanley Group (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
2/06/06	Received Southern California additional citations, served on 2/3/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
2/06/06	Received Intervenor Nevada Power Company Petitioner Sierra Pacific Power letter dated 2/3/06 re: notice is hereby given of a settlement with Enron. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757] (wp)
2/16/06	Received notice of Suggestion of Bankruptcy of Calpine Energy

	Services, L.P.; served 02/06/06. [FED EX TO PANEL] (je) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
6/23/06	Received Public Utility Dist's additional citations, served on 6/19/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
7/07/06	Received Intervenor Nevada Power Company letter dated 7/5/06 re: Nevada Power and EPM have reach a settlement. The settlement has no bearing on the legal issues awaiting resolution by the court. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
8/01/06	Received Public Utility Dist additional citations, served on 7/28/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp)
12/19/06	FILED OPINION: GRANTED AND REMANDED (Terminated on the Merits after Oral Hearing; Remanded; Written, Signed, Published. James R. BROWNING; Harry PREGERSON; Marsha S. BERZON, author.) FILED AND ENTERED JUDGMENT. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] 2/9/07 in 03-72511, in 03-74208, in 03-74617, in 03-74757, in 04-

	70712 (ca)
2/13/07	MANDATE ISSUED [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je)
3/12/07	MANDATE ISSUED [03-72511, 03-74208, 03-74617, 03-74757, 04-70712]
3/15/07	Received letter from the Supreme Court dated 03/12/07 re: ex.tm.f petition for writ of certiorari granted to and including May 3, 2007. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je)
5/08/07	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-1457. filed on 5/4/07. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (ca)
5/11/07	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-1462 filed on May 3, 2007. [Served Panel] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712]
10/02/07	Received notice from Supreme Court, petition for certiorari GRANTED on 9/25/07. Supreme Court Nos. 06-1457 and 06-1462 are consolidated. (lee) [03-72511, 03-74208, 03-74617, 03-74757]

E. Docket No. 04-70712

Date Filed	Docket Text
2/19/04	Received copy of DC Circuit Appeals Court order filed on 2/2/04 transferring the petition to the USCA 9th Circuit. [04-70712] (ca) [04-70712]
2/19/04	FILED PETITION FOR REVIEW DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL, NOTIFIED RESPONDENTS OF FILING, SENT PETITIONER CIVIL APPEALS DOCKETING STATEMENT. setting schedule as follows: CADS due 3/4/04; petitioners' opening brief is due 5/10/04; respondents' brief is due 6/8/04; petitioner's optional reply brief is due 6/22/04. [04-70712] (ca) [04-70712]
2/19/04	Filed PUC of Nevada's motion to intervene; served on 2/4/04. (mailed to the DC of Columbia circuit and forwarded to the 9th Cir. for our consideration, PROMO) (Sent to MOATT 3/29/04 per PROMO) [04-70712] (ca) [04-70712]
2/19/04	Filed Reliant Energy's motion to intervene; served on 2/4/04. (sent to the DC of Columbia circuit and forwarded to 9th Cir. for our consideration, PROMO) (Sent to

MOATT 3/29/04 per PROMO) [04-70712] (ca) [04-70712]

2/19/04 Filed California Electricity Oversight Board's motion to intervene; served on 2/6/04 (MOATT per PROMO) [5018604] [04-70712] (ba) [04-70712]

2/19/04 Filed American Electric Power Service Corporation's motion to intervene; served on 2/9/04 (MOATT per PROMO) [5018608] [04-70712] (ba) [04-70712]

2/24/04 Filed Consent Motion of The Office of the Attorney General for the state of Nevada, Bureau of Consumer Protection to vacate briefing schedule and to consolidate cases (04-70712, 03-74208, 03-74601, 03-74617, 03-74630, 03-74631, 03-74757, 04-70379) and request for expedited ruling; served on 2/23/04 (MOATT via PROMO) [4997088] [04-70712] (ba) [04-70712]

3/4/04 Filed John E. McCaffrey for Petitioner Attorney General, NV Civil Appeals Docketing Statement; served on 3/3/04 (to CONFATT) [04-70712] [04-70712] (ba) [04-70712]

3/11/04 Filed order (Deputy Clerk: bls/CONFATT) Based on a review of the Civil Appeals Docketing Statement, this case is not selected for inclusion in the Mediation Program. Counsel for any party interested in

obtaining assistance from the court in pursuing settlement of the case on appeal or learning more about the Mediation Program is encouraged to contact Lisa J. Evans, Circuit Mediator, by fax (415) 556-9725. The communication will be kept confidential, if requested, from the other parties in the case. Counsel are requested to send copies of this order to their clients. [04-70712] (ba) [04-70712]

3/11/04 Filed El Paso Merchant Energy, L.P.'s motion to intervene; served on 3/12/04 (MOATT per PROMO) [5018621] [04-70712] (ba) [04-70712]

4/27/04 Filed order (Diarmuid F. O'SCANNLAIN, Carlos T. BEA): PUD No.1's mtn for discovery and appointment of a special master is denied w/o prejudice to raising these issues in the briefs. The ct consolidates Nos. 03-72511, 03-74208, 03-74617, 03-74757 and 04-70712. The following parties' mtn to intvn are granted or have already been granted; American Electric Power Srvc Corp., as a non-aligned intvnr; CA PUC, on behalf of petitioners: CA Oversight Bd, on behalf of petitioners; NV Bureau of Consumer Protection, on behalf of petitioners; NV PUC, on behalf of petitioners; Allegheny Energy Supply

Co. on behalf of respondent; BP Energy Co., on behalf of respondent; Calpine Energy on behalf of respondent; El Paso Merchant Energy on behalf of respondent; Enron Power Mrktng on behalf of respondent; Mirant Americas Energy Mrktng on behalf of respondent; Morgan Stanley on behalf of respondent; and Reliant Energy Srvc on behalf of respondent. The br sch is set as follows: Petitioners' opening briefs are due June 1, 2004. Petitioners-Intvnrs' opening briefs are due July 1, 2004; Respondents' answr brief is due Aug. 2, 2004; Respondent-Intvnrs' answr briefs are due Sept. 2, 2004; the non-aligned intvnr's brief is due Oct. 4, 2004; Petitioner's optional reply briefs are due 14 days after srvc of the non-aligned intvnr's brief; and Petitioners-Intvnrs' optional reply briefs are due 28 days after srvc of the non-aligned intvnr's brief. The litigants are reminded of the ct's preference for joint briefs. All other pending mtn are denied as moot. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/2/04 Filed original and 15 copies Petitioner Public Utility Dist in 03-72511,

Petitioner Public Utility Dist in 03-74208, Petitioner Nevada Power Company in 03-74617, Petitioner Sierra Pacific Power in 03-74617, Petitioner Southern Cal. Water in 03-74757, Petitioner Attorney General, NV in 04-70712 opening brief (Informal: n) 62 pages and zero excerpts of record; served on 6/1/04. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/2/04 Filed original and 15 copies Petitioner Southern Cal. Water Petitioner in 03-74757 opening brief (Informal: no) 71 pages served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/2/04 Filed original and 15 copies Petitioner Nevada Power Company in 03-74617, Petitioner Sierra Pacific Power in 03-74617 opening brief 65 pages served on 6/1/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/3/04 Filed original and 15 copies Petitioner Public Utility Dist opening brief (Informal: no) 64 pages and five excerpts of record in 7 volumes; served on 6/1/04 [03-74208, 03-72511, 03-

74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/8/04 Filed mtn of Petitioner PUD No.1's mtn to supplement the record/request for judicial ntc, any response and any related filings shall be rfr to the merits pnl for resolution. Pursuant to Ninth Cir.R. 27-13, the excerpts of record shall be maintained under seal. (Motion recvd 6/30/04) [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/17/04 Filed Intervenor El Paso Merchant's opposition to the motion to supplemental record and take judicial notice (MERITS PANEL) served on 6/17/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

6/21/04 Filed Petitioner Public Utility Dist's reply in support of motion to supplement the record and take judicial notice. (MERITS PANEL) served on 6/18/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

8/2/04 Filed mtn of respondent FERC for enlargement of brief size; served

7/30/04. (03-72511, 03-74208, 03-74617, 03-74757, 04-70712) (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

9/1/04 Filed order (App.Comm/ PROMO) A review of respondent's proposed oversize br reveals that it may reasonably be shortened, particularly by eliminating repetition and by shortening the summary of argument. Accordingly, respondent's mtn to for leave to file an oversize br is granted in part. On or before Sept. 22, 2004, respondent shall file a br not to exceed 35,000 words. Respondent-intervenor's br(s) shall be due Oct. 20, 2004. The nonaligned intervenors br(s) shall be due Nov. 17, 2004. Petitioners optional reply br shall be due Dec. 1, 2004. Petitioner-intervernors' optional reply br(s) shall be due Dec. 15, 2004. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

9/23/04 Filed original and 15 copies respondent FERC's 149 pages brief; served on 1/22/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74617

9/28/04 Calendar check performed [03-72511, 03-74208, 03-74617, 03-74757, 04-

70712] (mw) [03-72511 03-74208 03-74617 03-74757 04-70712]

10/4/04 Calendar materials being prepared. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (rei) [03-72511 03-74208 03-74617 03-74757 04-70712]

10/07/04 CALENDARED: Pasadena Dec 8 2004 9:00 a.m. Courtroom 3 [03- 72511, 03-74208, 03-74617, 03-74757, 04-70712] (th) [03-72511 03-74208 03-74617 03-74757 04-70712]

10/12/04 Filed order (Deputy Clerk: KB) These cases are being placed before the same panel for disposition because they involve issues arising from the California energy crisis. The cases are not consolidated for oral argument. Csl may wish to confer in order to enhance oral argument. The clerk shall serve a copy of the court's service list for each case on all parties. [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-

71358 04-71872]

10/22/04 Rec'd errata to brief from Intervenor Mirant Americas Engy; served 10/21/04. [Faxed to Panel] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

10/29/04 Filed Aples Mirant Americas Dev, Mirant Americas Energy , Mirant Corporation, Mirant Potrero LLC; Mirant Delta LLC; Mirant Investment; Mirant Ca LLC's motion to further stay appellate proceedings and status report regarding Bankruptcy; served on 10/28/04 (faxed to Panel/Pas) [03-56793, 03-72511, 03-72874, 03-73547, 03-74207, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] [5224596] (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/3/04 Filed Aples Reliant Energy Services Inc. et al in No. 03-56793 motion for summary affirmance without argument and alternative motions to strike new conventions and to submit surreply brief; served on 11/3/04 (Panel) (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-

74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/3/04 Received original and 15 copies Aples Reliant Energy Services, Inc., et al in No. 03-56793 Surreply brief of 13 pages; served on 11/3/04 (Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/8/04 Filed joint mtn of petitioners, respondents and intervenors regarding oral argument; served 11/08/04. [Faxed to Panel] [03-72511, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]

11/15/04 Filed Aplt T&E Pastorino in No. 03-56793 opposition to mtn for summary affirmance without argument and to alternative motions to strike new contentions and to submit surreply brief; served on (Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427,

04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/17/04 Filed order (Deputy Clerk: hh) In Pub. Util. Dist. No. 1's v. FERC, No. 03-72511 (consolidated), the mtn of the parties is GRANTED: Each side is allowed 45 minutes per side for oral argument. The parties are ltd, however, to no more than three attorneys per side. Also, any reply briefs of intvnrs in support of petitioners must be filed on or before Dec. 3, 2004. In Pub. Util. Comm'n v. FERC, no. 03-74207 (consolidated), the mtn of the parties is GRANTED: Each side is allowed 30 minutes per side for oral argument. The parties are ltd, however, to no more than two attorneys per side. Oral argument of these two cases will be heard separately. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74207 03-74208 03-74246 03-74617 03-74757 04-70712]

11/18/04 Filed Aples' letter dated 11/18/04 treated as reply in support of motion for summary affirmance in No. 3-

56793 (faxed to Panel) [03-56793, 03-72511, 03-72874, 03-73357, 03-73547, 03-74207, 03-74208, 03-74246, 03-74475, 03-74617, 03-74757, 04-70427, 04-70459, 04-70712, 04-70964, 04-71328, 04-71358, 04-71872] (gva) [03-56793 03-72511 03-72874 03-73357 03-73547 03-74207 03-74208 03-74246 03-74475 03-74617 03-74757 04-70427 04-70459 04-70712 04-70964 04-71328 04-71358 04-71872]

11/23/04 Filed Unopposed motion of intervenors supporting Respondent to allow counsel for suppliers to each of the Nevada Companies, SCWC and Snohomish respectively to present oral argument; served on 11/23/04 (Faxed to PANEL) [5246347] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (ba) [03-72511 03-74208 03-74617 03-74757 04-70712]

11/29/04 Filed order (Deputy Clerk: hh) The unopposed mtn of intervenors supporting respondent to allow counsel for supplies to each of the Nevada companies, SCWC and Snohomish respectively to present oral arg is DENIED. No party on either side will be permitted more than one attorney to present oral arg. (PHONED COUNSEL) [5246347-1] in 03-72511, 03-74208, 03-74617, 03-74757, 04-70712 [03-72511, 03-74208, 03-74617,

03-74757, 04-70712] (gail) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/2/04 Filed original and 15 copies Public Utility Dist in 03-72511, Public Utility Dist in 03-74208 reply brief w/5 suppl joint excerpts of record in 1 vol. (Informal: no) 32 pages; served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/2/04 Filed original and 15 copies Attorney General, NV brief (Informal: no) 31 pages 5 suppl joint excerpts in 1 vol. served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/2/04 Filed Petrs JOINT mtn to take judicial notice; served on 12/1/04. (faxed to PANEL) [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (af) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/2/04 Filed original and 15 copies Southern Cal. Water in 03-74757 reply brief, (Informal: no) 33 pages w/5 suppl joint excerpts of record in 1 vol. served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt) [03-72511 03-74208 03-74617 03-74757 04-

70712]

12/3/04 Filed original and 14 copies Nevada Power Company & Sierra Pacific Power reply brief w/5 suppl joint excerpts of record in 1 vol. (Informal: no) 30 pages; served on 12/1/04 PANEL [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (vt) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/3/04 Filed original and 15 copies Public Utility Dist in 03-74208 reply brief, 34 pages; served on 12/2/04 [03-74208, 03-72511, 03-74617, 03-74757, 04-70712,] (wp) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/7/04 Received Petitioners' supplement to joint motion to take judicial ntc; served 12/06/04. [FAXED TO PASADENA CLK FOR DISTRIBUTION TO PANEL] [03-74208, 03-72511, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/8/04 ARGUED AND SUBMITTED TO James R. BROWNING, Harry PREGERSON, Marsha S. BERZON [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (pg) [03-72511 03-74208 03-74617 03-74757 04-70712]

12/13/04	Received Kenneth W. Irvin letter dated 12/10/04 re: at the conclusion of oral argument the panel invited parties to submit a ltr concerning any supplemental points. [Faxed to Panel] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]
1/24/05	Filed Intervenor Nevada Power Company joint motion for expedited consideration. (PANEL) [03-74208, 03-74246, 03-74617, 03-74757, 04-70712] served on 1/21/05 [5307278] (wp) [03-74208 03-74246 03-74617 03-74757 04-70712]
2/7/05	Filed Intervenor Enron Power's response to joint motion for expedited consideration (MOATT) [5307278-1] served on 2/7/05 [03-74208, 03-74207, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-74207 03-74208 03-74246 03-74617 03-74757 04-70712]
10/7/05	Received revised corporate disclosure statement. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
12/8/05	Received Intervenor Nevada Power Company letter dated 12/7/05 re: hereby provides notice of a settlement with intervenor Morgan Stanley Group

	(PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
2/6/06	Received Southern California additional citations, served on 2/3/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
2/16/06	Received notice of Suggestion of Bankruptcy of Calpine Energy Services, L.P.; served 02/06/06. [FED EX TO PANEL] (je) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
6/23/06	Received Public Utility Dist's additional citations, served on 6/19/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
7/7/06	Received Intervenor Nevada Power Company letter dated 7/5/06 re: Nevada Power and EPM have reach a settlement. The settlement has no bearing on the legal issues awaiting resolution by the court. (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757

	04-70712]
8/1/06	Received Public Utility Dist additional citations, served on 7/28/06 (PANEL) [03-74208, 03-72511, 03-74246, 03-74617, 03-74757, 04-70712] (wp) [03-72511 03-74208 03-74246 03-74617 03-74757 04-70712]
12/19/06	FILED OPINION: GRANTED AND REMANDED (Terminated on the Merits after Oral Hearing; Remanded; Written, Signed, Published. James R. BROWNING; Harry PREGERSON; Marsha S. BERZON, author.) FILED AND ENTERED JUDGMENT. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] 2/9/07 in 03-72511, in 03-74208, in 03-74617, in 03-74757, in 04-70712 (ca) [03-72511 03-74208 03-74617 03-74757 04-70712]
2/13/07	MANDATE ISSUED [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]
3/12/07	Received letter from the Supreme Court dated 03/08/07 re: ex.tm granted to and including May 3, 2007 in which to file petition for writ of certiorari. [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]

3/15/07	Received letter from the Supreme Court dated 03/12/07 re: ex.tm.f petition for writ of certiorari granted to and including May 3, 2007. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74207 03-74208 03-74246 03-74617 03-74757 04-70712]
5/8/07	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-1457. filed on 5/4/07. [03-72511, 03-74207, 03-74208, 03-74246, 03-74617, 03-74757, 04-70712] (ca) [03-72511 03-74207 03-74208 03-74246 03-74617 03-74757 04-70712]
5/11/07	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-1462 filed on May 3, 2007. [Served Panel] [03-72511, 03-74208, 03-74617, 03-74757, 04-70712] (je) [03-72511 03-74208 03-74617 03-74757 04-70712]
10/2/07	Received notice from Supreme Court, petition for certiorari GRANTED on 9/25/07. Supreme Court Nos. 06-1457 and 06-1462 are consolidated. (lee) [03-72511 03-74208 03-74617 03-74757 04-70712]

APPENDIX C

Exh. No. MSC-20

Errata
Filed 7/29/02

MORGAN STANLEY CAPITAL GROUP INC.
1585 BROADWAY
NEW YORK, NEW YORK 10036

January 27, 2001

Confirmation Agreement

To: Public Utility District No. 1 of Snohomish County
Attn: Manager of Power Supply
Fax: (425) 267-6529

Trade Date: January 26, 2001
Reference:

This is to confirm Morgan Stanley Capital Group Inc.'s ("MSCG") sale of daily/monthly of Firm Power from/to Public Utility District No. 1 of Snohomish County, Washington ("Snohomish"). The following Transaction and this Confirmation Agreement shall be subject to the WSPP Agreement and the Special Provisions thereto (Attachment "A"), which are attached hereto and made a part hereof. The terms are as follows:

Seller:	MSCG
Purchaser:	Snohomish
Contract Quantity:	25 MW hours
Point(s) of Delivery:	Mid-C
Period of Delivery:	Delivery of Firm Power shall commence (the "Commencement Date") at Hour Ending 01:00 PPT on April 2001, and shall end at Hour Ending 24:00 PPT on December 31, 2009.
Delivery Hours:	All Hours
Contract Price:	$ 105.00 per MWb
Type of Service:	Service Schedule C (as modified by Attachment "A")

Special Provisions:

Snohomish hereby further represents to MSCG, as of the date of the Confirmation Agreement, and of each delivery of Capacity and/or Energy in connection with such Transaction, that no authorizations, approvals, and resolutions of the governing body or other authorized body of Snohomish limit or restrict in any regard the type, number, duration, or notional or transactional amount of this Transaction.

Terms used but not defined herein shall have the meaning ascribed to them in the WSPP Agreement

as amended by Attachment "A".

IF RECIPIENT OF THIS CONFIRMATION DISAGREES WITH ANY OF THE TERMS SUMMARIZED HEREIN, IT SHALL PROMPTLY NOTIFY MSCG BY TELEPHONE AND FACSIMILE TRANSMISSION. FAILURE BY RECIPIENT TO EXECUTE AND RETURN THIS CONFIRMATION OR TO NOTIFY MSCG OF ITS DISAGREEMENT WITHIN THREE (3) BUSINESS DAYS OF RECEIVING THIS CONFIRMATION CONSTITUTES THE PARTY'S AGREEMENT TO THE TERMS SET FORTH HEREIN.

Morgan Stanley Capital Group Inc.

By: s/ [illegible]

Name: [illegible]

Title: [illegible]

Phone: 212-761-5920
Fax: 212-761-0292

Date: 1/29/01

Public Utility District No. 1 of Snohomish County

By: s/ John P. White

Name: John P. White

Title: Acting General Manager

Date: 1/30/01

Attachment "A"
Additional Special Provisions
Amendment to WSPP Agreement

By this Attachment to the Confirmation Agreement, Morgan Stanley Capital Group Inc. ("MSCG") and Public Utility District #1 of Snohomish County ("Snohomish") (individually a "Party" and collectively the "Parties") agree to amend certain sections of the WSPP Agreement, dated July 1, 2000 as amended from time to time in accordance with the guidelines of the Western System Power Pool guidelines and procedures (the "WSPP Agreement"). All references in the WSPP Agreement to "this Agreement" shall be deemed to include this Attachment "A." In the event of any conflict between the terms of this Attachment "A" and the terms of the WSPP Agreement, the terms of this Attachment "A" shall prevail. In the event of any conflict between the terms of any Confirmation Agreement and the terms of this Attachment "A," the Confirmation Agreement shall prevail.

Section 4 of the WSPP Agreement is modified by inserting the following new definitions at the end thereof:

Affiliate: means, in relation to any person, any entity controlled, directly or indirectly, by such person, any entity that controls, directly or

indirectly, such person, or any entity directly or indirectly under common control with such person, except that with respect to MSCG the term Affiliate shall not include Morgan Stanley Derivative Products Inc. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

Credit Assurance: means a cash pre-payment, an irrevocable standby letter of credit, a Guarantee Agreement, Treasury securities, a performance bond, a surety bond and/or other security, all in a form and in an amount acceptable to the Requesting Party in its sole discretion.

Guarantor: means, as to a Party (the "first Party"), the person(s), if any, executing a Guarantee Agreement which supports any or all of the obligations of the first Party to the other Party.

Related Agreement: means any collateral, security, guaranty or other similar credit agreement or document undertaken in connection with this Agreement or the Confirmation Agreement of a specific Transaction, including, without limitation, that certain Collateral Annex, dated January 26, 2001, between Morgan Stanley Capital Group Inc. and Public Utility District #1 of Snohomish County.

Specified Agreement: means any contract or transaction, including an agreement with respect thereto (whether or not documented under or effected pursuant to a master agreement) now existing or hereafter entered into between one Party (or any Guarantor of such Party or any Affiliate of such Party) and the other Party (or any Guarantor

of such Party or any Affiliate of such Party).

Transaction or transaction: means a specific sale and purchase, or an option for sale and purchase, of capacity and/or energy to be supplied by one Party to the other Party.

Alternate Delivery Point: Mid-Columbia, To-BPA, or any delivery point that the Parties may agree upon from time to time.

Authorized Representative: A person designated by a Party pursuant to the provisions of subsection 12C.1 hereof.

Billing Month: Each period beginning at 0000 hours PPT on the first calendar day of each month and ending at 2400 hours PPT on the last calendar day of such month during the term of this Agreement.

BPA: Bonneville Power Administration or its successor.

Firm Capacity: System capacity that is made available to Snohomish for the term of this Agreement at the Point(s) of Delivery, as specified in Section 12A.

Firm Energy: Firm Energy associated with Firm Capacity provided at load factors specified in Section 12A.

Firm Power: Firm Capacity and associated Firm Energy which MSCG shall deliver to Snohomish, as provided in this Agreement.

Good Utility Practice: Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the region during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region and WSCC as well as being consistently adhered to by MSCG and Snohomish.

Mid-Columbia (or Mid-C): The substation and hydroelectric project electric power buses owned by Grant PUD, Chelan PUD and Douglas PUD where Snohomish has the right to exchange power with third parties.

Off-Peak Hours: Off-peak period: Hour Ending ("HE") 0100 - HE 0600 and HE 2300 - HE 2400 PPT Monday - Saturday; HE 0100 - HE 2400 PPT on Sundays, Additional Off-Peak Days: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

On-Peak Hours: On-peak period: HE 0700 - HE 2200 PPT Monday - Saturday.

Points of Delivery: The location for delivery of Firm Power hereunder determined pursuant to the Confirmation Agreement.

PPT: Pacific Prevailing Time: Pacific Standard Time or Pacific Daylight Savings Time, whichever is in effect in Washington State.

To-BPA: Any Control Area in the Pacific Northwest that is interconnected with the BPA transmission system.

WSCC: The Western Systems Coordinating Council.

Section 9.1 of the WSPP Agreement is deleted in its entirety and replaced with the following new Section 9.1:

9.1 Promptly after the end of each Billing Month during which Firm Energy and Firm Capacity is provided by MSCG to Snohomish pursuant to the terms of this Agreement, MSCG shall submit to Snohomish an invoice for the dollar amount due for Firm Capacity and Firm Energy delivered to Snohomish in the preceding Billing Month. The invoice shall set forth the amount of Firm Capacity and Firm Energy billed, the amount of Firm Energy and Firm Capacity delivered in each such Billing Month, and the price for such Firm Energy. All billing statements and compensation as required by this Agreement shall reflect the period beginning at 0000 hours PPT on the first day of each Billing Month and ending at 2400 hours PPT on the last day of that Billing Month.

Invoices shall be sent as specified below:

Public Utility District #1 of Snohomish County
Attn: General Accounting – Accounts Payable
P.O. Box 1107
2320 California Street
Everett, Washington 98206

Payments shall be sent as specified below to:

MORGAN STANLEY CAPITAL GROUP INC.
Northern Trust International NY
ABA: 026001122
Account: 102897-20010
Confirmation: MSCG

Section 12.2 of the WSPP Agreement is modified by deleting the Reservation and inserting the following new Sections 12.2 in its place:

12.2 Unless this Agreement requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made and shall become effective when delivered in person, or sent by registered or certified first class mail or overnight delivery service, to the persons

specified below:

MORGAN STANLEY CAPITAL GROUP INC.

Commodities Dept., 4th Floor
1585 Broadway
New York, NY 10036
ATTN: Deborah Hart

Phone: (212) 761-5920
Fax: (212) 761-0290

PUBLIC UTILITY DISTRICT #1 OF SNOHOMISH COUNTY

Attn: Manager of Power Supply
2320 California Street
Everett, Washington 98206

Either Party may, from time to time, by written notice to the other Party, change the designations or address of the person so specified as the one to receive notices pursuant to this Agreement.

The WSPP Agreement is modified by inserting the following new Sections 12A, 12B and 12C at the end of Section 12:

12A Firm Power Sale

12A.1 MSCG shall sell and make available and Snohomish shall purchase and receive at the Point(s) of Delivery prescheduled Firm

Power in accordance with the terms of this Agreement and WSPP Service Schedule C (Firm Power Sale or Exchange Service).

12A.2 Snohomish agrees to pre-schedule pursuant to Section 12B and purchase Firm Energy each Billing Month in an amount equal to the product of the number of hours in such Billing Month multiplied by the Firm Capacity for such billing month. The maximum rate of delivery for Firm Energy hereunder for each billing month shall equal the amount of Firm Capacity for such month.

12A.3 The amount of Firm Power Snohomish is required to schedule and purchase pursuant to subsection 12A.2 shall be reduced on a 1 for 1 basis for each megawatt hour of Firm Power Snohomish does not purchase or that MSCG does not sell due to Uncontrollable Forces. All Firm Power deliveries shall be prescheduled pursuant to Section 12B.

12B Pre-scheduling

12B.1 Snohomish shall pre-schedule delivery of Firm Power (in whole MWh amounts) by notification to MSCG's schedulers by 09:30 hours PPT on the day preceding delivery or as otherwise agreed by the Parties' schedulers.

12B.2 If the day referred to in subsection 12B.1 is a Saturday, Sunday, or holiday observed

by either Party, pre-schedules shall be submitted by 09:30 hours PPT on the last Business Day prior to such Saturday, Sunday, or holiday.

12B.3 In the event that either Party experiences an Uncontrollable Force, such Party shall have the right to request a schedule change at any time to respond to such Uncontrollable Force, and the other Party shall make reasonable efforts consistent with Good Utility Practice to comply with such request, but shall not be required to so comply if to do so would be inconsistent with Good Utility Practice.

12B.4 Except as provided in subsection 12B.3, schedule changes shall be by mutual agreement. The Parties' schedulers may waive or modify by mutual agreement any requirements of subsections 12B.1 through 12B.3 from time to time for a period not to exceed thirty (30) days.

12B.5 Except as provided in Section 21 hereof, all transactions hereunder shall be accounted for on the basis of the amounts of Firm Power scheduled hourly for delivery at the Point of Delivery, except that when deliveries are reduced or curtailed as provided in this Agreement, schedules shall be reduced after the fact to reflect such reductions or curtailments. If the scheduled deliveries and receipt of Firm Power are not maintained for an entire hour, deliveries shall be pro-rated

on a mutually agreed basis. The Parties shall maintain records of hourly firm Power schedules for accounting and operating purposes.

12B.6 MSCG will be responsible for all required tagging, electronic or by other means, in accordance with NERC and WSCC policies.

12C Authorized Representative

12C.1 Each Party shall designate one person as an Authorized Representative and at least one person as an alternate. Each Party shall notify the other Party within thirty (30) calendar days after execution of this Agreement of the designated Authorized Representative and alternates and shall promptly notify the other Party of any subsequent change in such designations.

12C.2 The Authorized Representative shall establish written procedures, if necessary, for implementing the scheduling provisions of this Agreement. Such procedures shall be adopted by mutual agreement.

12C.3 Authorized Representatives and alternates shall have no authority to modify any of the provisions of this Agreement.

Section 22.1 of the WSPP Agreement is modified by inserting the following new

language at the end thereof:

(e) The expiration or termination of a Related Agreement with respect to the obligations of the Defaulting Party under this Agreement or the Confirmation Agreement for a specific Transaction, or the failing or ceasing of such Related Agreement to be in full force or effect for the purpose of this Agreement or a Confirmation Agreement for a specific Transaction (in either case other than in accordance with the terms of this Agreement and any applicable Confirmation Agreement) before the satisfaction of all obligations of the Defaulting Party under this Agreement and under each Transaction to which such Related Agreement relates, without the prior written consent of the other Party;

(f) The Defaulting Party is subject to an event of default or material breach (howsoever defined) under any Specified Agreement, after giving effect to any applicable notice or grace period under such Specified Agreement;

(g) The Defaulting Party or its Guarantor fails to make payment when due under one or more agreements or instruments relating to borrowed money ("Specified

Indebtedness") in an aggregate amount (individually or collectively) of not less than ten million dollars ($10,000,000) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments, before it would otherwise have been due and payable, or defaults in making one or more payments in an aggregate amount (individually or collectively) of not less than ten million dollars ($10,000,000) under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(h) The Defaulting Party fails to provide Credit Assurances or any other collateral pursuant to the terms of any Related Agreement.

Section 24 of the WSPP Agreement is amended by deleting that section in its entirety and replacing it with the following:

This Agreement, any Confirmation Agreement, any Transaction, and the Parties' rights and obligations thereunder, shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles, except that the laws of the State of Washington shall govern with respect to defining the legal personality and authority of Snohomish.

Section 24 is further amended by adding the following new Section 24.A at the end thereof:

"24A. Jurisdiction and Costs. The Parties consent to, and waive any objection to, jurisdiction and venue in any state or federal court of competent jurisdiction in the State of Washington in any judicial action arising out of, resulting from or in any way relating to this Agreement, any Confirmation Agreement, any Transaction, or the Parties' rights and obligations thereunder, and both Parties waive any right to trial by jury in such action. In the event such judicial proceedings arc instituted by either Party, the prevailing Party shall be entitled to award of its costs and attorneys' fees incurred in connection with such proceedings."

Section 27 of the WSPP Agreement is modified by deleting that Section in its entirety and inserting the following new Section 27.1 in its place:

"27.1 Financial Information. If requested by either Party, the other Party shall deliver (i) within 120 days following the end of each fiscal year, a copy of its annual report and the annual report of its Guarantor, if any, containing in each case audited consolidated financial statements for such fiscal year certified by independent certified public accountants and (ii) within 90 days after the end of each of its (and its Guarantor's) first three fiscal quarters of each fiscal year, a copy

of its quarterly report and the quarterly report of its Guarantor, if any, containing unaudited consolidated financial statements for such fiscal quarter. MSCG may comply with this Section by delivering reports and statements of Morgan Stanley Dean Witter & Co. (or any successor thereto). In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP or such other principles then in effect; provided that, should any such statements not be available timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such Party diligently pursues the preparation, certification and delivery of the same."

Section 28.2 of the WSPP Agreement is modified by inserting the following new language and new Section 37A at the end thereof:

MSCG and Snohomish shall net payments in accordance with Exhibit "A" ("Netting") to the WSPP Agreement.

Section 37 of the WSPP Agreement is modified by inserting the following new language at the end thereof:

"Each Party further represents and warrants to the other Party, as of the date of the Confirmation Agreement, and of each delivery of Capacity and/or Energy in connection with such Transaction, that:

(a) It is not relying upon any representations of the other Party other than those expressly set forth in the WSPP Agreement, any Confirmation Agreement or any written guarantee of the obligations of such other Party;

(b) It has entered into the WSPP Agreement and each Transaction and Confirmation Agreement thereof as principal (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise) and has made its trading and investment decisions based upon its own judgment, with a full understanding of the material terms and ability to assume the risks of the same;

(c) The other Party has not given to it any assurance as to the expected financial results of entering into the WSPP Agreement or of any and all of the Transactions.

37A Additional Representations of Snohomish. Snohomish hereby further represents to MSCG, as of the date of the Confirmation Agreement, and of each delivery of Capacity and/or Energy in connection with such Transaction, that:

(a) The execution and delivery by Snohomish of this Agreement, each Confirmation and any other documentation relating hereto, and the performance of Snohomish of its obligations hereunder and thereunder, are in furtherance, and not in violation, of the governmental purposes for which Snohomish is organized pursuant to the laws of the State of Washington;

(b) This Agreement and each Transaction hereunder do not constitute any kind of investment by Snohomish that is proscribed by any constitution, charter, law, rule, regulation, government code, constituent or governing instrument, resolution, guideline, ordinance, order, writ, judgment, decree, charge, or ruling to which Snohomish (or any of its officials in their respective capacities as such) or its property is subject;

(c) No authorizations, approvals, and resolutions of the governing body or other authorized body of Snohomish limit or restrict the ability of Snohomish to enter into and perform the obligations under this Agreement;

(d) The payments due to MSCG hereunder shall be treated as "Electric System Operating Expenses" payable prior to payment of any amounts relating to Electric System Bonds, Electric System

Revenue and Refunding Bonds, or any other notes or bonds now or hereafter issued by Snohomish;

(e) Snohomish is a state or political subdivision thereof, or an instrumentality, agency or department of either of the foregoing; and

(f) Snohomish is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or assets (irrespective of their use or intended use) from (i) suit or arbitration, (ii) jurisdiction of any statutorily specified Washington court, (iii) relief by way of injunction, order for specific performance or for recovery of property, or (iv) execution or enforcement of any judgment or arbitration award to which it or its revenues or assets might otherwise be made subject (whether or not claimed) may be attributed to such party or its revenues or assets.

The WSPP Agreement is modified by inserting the following new Sections 39A, 39B, 39C and 39D at the end of Section 39:

39A Government Approvals

The Parties shall cooperate with each other and provide reasonable assistance in order to obtain any and all regulatory approvals

necessary to effectuate the purposes of this Agreement. MSCG and Snohomish shall each obtain and maintain all necessary government approvals necessary for its performance under this Agreement.

39B Fixed Rates

The rates for service specified in this Agreement shall remain in effect for the terms of this Agreement and shall not be subject to change through application to FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act.

39C Indemnity

Except as provided herein, each Party agrees to indemnify, defend, and hold harmless the other Party, and any of said other Party's affiliates, directors, officers, employees, agents and permitted assigns, from and against all claims, losses, liabilities, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and disbursements) directly incurred in connection with or directly arising out of:

(a) any breach of representation or warranty or failure to perform any covenant or agreement in this Agreement, the WSPP Agreement, or in a Transaction by said Party.

(b) any violation of applicable law, regulation or order by said Party.

(c) any claim by a third party arising out of an act or omission of said Party.

(d) the transmission or distribution of Energy by said Party on its own side of the Delivery Point(s) hereunder (except to the extent caused by the gross negligence or willful misconduct of the other Party).

In the case of joint or shared liability, the indemnifying Party is responsible to indemnify, defend and hold harmless the other Party only to the extent of its liability.

39D LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT, THE WSPP AGREEMENT, OR ANY TRANSACTION FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR REVENUE OR THE LOSS OF USE OF EITHER, COSTS OF REPLACEMENT ENERGY OR OF CAPITAL, OR CLAIMS OF CUSTOMERS OF THE OTHER PARTY RELATING TO LOSS OF ENERGY SUPPLY, EXCEPT

AS EXPRESSLY PROVIDED IN SECTIONS 21, 22.1, 22.2 AND 22.3 OF THE WSPP AGREEMENT. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES RECOVERABLE HEREUNDER REPRESENT A REASONABLE ESTIMATE OF LOSS AND NOT A PENALTY.

AGREED TO ON JANUARY 26, 2001

PUBLIC UTILITY DISTRICT #1 OF SNOHOMISH COUNTY

By: s/ John P. White

Title: GM Power & Business Service
Acting General Manager

AGREED TO ON JAN 26, 2001

MORGAN STANLEY CAPITAL GROUP INC.

By: s/ [illegible]

Title: [illegible]

COLLATERAL ANNEX

This Collateral Annex supplements, forms a part of, and is subject to, the Western Systems Power Pool ("WSPP") Agreement, effective July 1, 2000, as amended by the WSPP from time to time and the Attachment "A," Additional Special Provisions Amendment to the WSPP Agreement, dated January 26, 2001 (collectively, the "Master Agreement") between Public Utility District #1 of Snohomish County ("Counterparty") and Morgan Stanley Capital Group Inc. ("MSCG"). The obligations of Counterparty under the Master Agreement shall be secured in accordance with the provisions of this Collateral Annex, which sets forth the conditions under which a Party will be required to deliver cash, securities and other property, as well as the conditions under which a Party will release such Collateral.

1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below (capitalized terms used but not defined in this Collateral Annex shall have the meaning specified in the Master Agreement):

"Business Day" means a weekday on which commercial banks in New York City are not required or authorized by law to close for business.

"Collateral" means (i) cash ("Cash Collateral"); (ii) irrevocable standby letters of credit ("Letters of Credit"), expiring in not less than 15 days, issued by a bank acceptable to Pledgee under

language in a form and in an amount acceptable to Pledgee; and (iii) such other property of Pledgor as Pledgee may, in its sole discretion, agree in writing to accept as Collateral.

"Collateral Amount" means the sum of the Collateral Values.

"Collateral Value" on any date means the fair market value of each item of Collateral on deposit with, or held by, or for the benefit of, Pledgee pursuant to this Collateral Annex as determined by the Valuation Agent in a commercially reasonable manner.

"Custodian" means a bank or trust company located in the State of New York having capital and surplus of at least $500,000,000; provided, however, that Morgan Stanley & Co. Incorporated, and any successor thereto or any agent or Affiliate thereof, shall at all times be eligible to act as Custodian for MSCG hereunder.

"Credit Rating" shall mean, (A) with respect to MSCG's Guarantor, on any date of determination, the respective rating then assigned to its unsecured, unsubordinated and senior long term indebtedness (not supported by third party credit enhancement) by Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) ("S&P"), or its successor, or Moody's Investor Service, Inc. ("Moody's"), or its successor, or the specified rating agency, and (B) with respect to Counterparty, on any date of determination, the respective rating then assigned to Public Utility District No. 1 of Snohomish County "Electric System Bonds" or to Public Utility District

No. 1 of Snohomish County "Electric System Revenue and Refunding Bonds" by S&P or Moody's, or the specified rating agency.

"Delivery Amount" on any date means the excess, if any, of the Net Exposure Amount over the Collateral Amount.

"Mark-to-Market Value" means with respect to a Transaction as of any MTM Calculation Date, the U.S. Dollar amount determined by the Valuation Agent in a commercially reasonable manner representing: (a) the out-of-the-money amount, if any, owed by Counterparty to MSCG as of such MTM Calculation Date (such amount being expressed as a positive number); or (b) the out-of-the-money amount, if any, owed by MSCG to Counterparty as of such MTM Calculation Date (such amount being expressed as a negative number).

"Minimum Transfer Amount" means $100,000; provided that if an Event of Default has occurred and is continuing with respect to Pledgor, the Minimum Transfer Amount with respect to Pledgor shall be zero.

"MTM Calculation Date" means any Business Day on which the Valuation Agent chooses or is requested by Counterparty to make the determinations referred to in Section 3 or 4 of this Collateral Annex.

"Net Exposure Amount" shall mean the excess, if any, of (a) the absolute value of the Net Mark-to-Market Value minus (b) the Pledgor's

Threshold Amount.

"Net Mark-to-Market Value" means as of any MTM Calculation Date, the sum expressed in U.S. Dollars of the Mark-to-Market Values for all Transactions outstanding on such MTM Calculation Date.

"Notification Time" means 5:00 p.m., New York time, on the MTM Calculation Date.

"Obligations" has the meaning specified in Section 2 hereof.

"Pledgee" means (a) MSCG if the Net Mark-to-Market Value is a positive number, and (b) Counterparty if the Net Mark-to-Market Value is a negative number.

"Pledgor" means (a) Counterparty if the Net Mark-to-Market Value is a positive number, and (b) MSCG if the Net Mark-to-Market Value is a negative number.

"Reference Market-makers" means four leading dealers in the relevant market selected by the Valuation Agent in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that the Valuation Agent applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city. Each quotation will be for an amount, if any, that would be paid to Valuation Agent (expressed as a negative number) or by Valuation Agent (expressed as a positive number) in

consideration of an agreement between Valuation Agent (taking into account this Collateral Annex and the existence of any guarantor with respect to the obligations of Valuation Agent) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for Valuation Agent the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties in respect of such Transaction or group of Transactions.

"Rounding Amount" shall mean $75,000.

"Return Amount" on any date means the excess, if any, of the Collateral Amount over the Net Exposure Amount.

"Security Agreements" means this Collateral Annex and any other document, instrument, agreement or confirmation (including any Confirmation) providing for the delivery of collateral to secure Obligations.

"Threshold Amount" means, with respect to MSCG, at any time the amount specified in the table below under the relevant heading opposite the lower of the Credit Ratings; and with respect to Counterparty, at any time the amount specified in the table below under the relevant heading opposite the lower of the Credit Ratings; provided, that (a) if the Credit Rating of MSCG's Guarantor or Counterparty has no such ratings or (b) an Event of Default with respect to MSCG or Counterparty has

occurred or is continuing, the Threshold amount with respect to such party shall each be zero.

S&P	Moody's	Threshold
AA- or above	Aa3 or above	$25,000,000
A+, A or A-	A1, A2 or A3	$20,000,000
BBB+, BBB or BBB-	Baa1, Baa2 or Baa3	$5,000,000
BBB-, lower or unrated	Baa3, lower or unrated	$0 (zero)

"Valuation Agent" for purposes of this Collateral Annex shall be Morgan Stanley Capital Group Inc.

2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may become due from Pledgor to Pledgee and the performance by Pledgor of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Master Agreement and any other document, instrument or agreement in connection therewith (collectively, the "Obligations"), Pledgor hereby pledges, assigns, conveys and transfers to Pledgee, and hereby grants to Pledgee, a first priority continuing security interest in and to, and a general first lien upon and right of set-off against, all of the right, title and interest of Pledgee in and to, all Collateral which has been or may in the future be

delivered or otherwise transferred to, or received by, Pledgee and/or any agent for the safekeeping of such Collateral for the benefit of Pledgee pursuant to Section 3 of this Collateral Annex, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing.

3. Delivery of Collateral.

(a) On each MTM Calculation Date, the Valuation Agent shall determine (i) the Net Mark-to-Market Value, if any, (ii) the Net Exposure Amount, if any, and (iii) the Collateral Amount, if any, and shall notify Counterparty in writing of such calculations on or prior to the Notification Time.

(b) On any MTM Calculation Date on which (i) no Event of Default (or an event or condition that with the giving of notice or the lapse of time, or both, would become an Event of Default; hereinafter, a "Potential Event of Default"), has occurred and is continuing under this Collateral Annex and the Master Agreement with respect to Pledgee, and (ii) the Delivery Amount equals or exceeds the Minimum Transfer Amount, Pledgor shall, after receiving notice from Pledgee, pay or deliver, or cause to be paid or delivered, to Pledgee and/or any Custodian of such Collateral for the benefit of Pledgee, as security for the Obligations, Collateral in an amount and with a Collateral Value at least equal the Delivery Amount. The amount of Collateral required to be paid or delivered hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Collateral shall be

delivered by Pledgor not later than the close of business on the second Business Day following the day on which Pledgor receives such notice.

(c) Cash Collateral shall be paid, in immediately available funds in U.S. Dollars, to the account as set forth in a written notice from Pledgee.

4. Return of Additional Collateral.

(a) On any MTM Calculation Date on which either (i) no Event of Default or Potential Event of Default has occurred and is continuing under this Collateral Annex or the Master Agreement with respect to Pledgor and (ii) the Return Amount equals or exceeds the Minimum Transfer Amount, Pledgee shall, after receiving notice from Pledgor, return or pay, or cause to be returned or paid, to Pledgor Collateral in an amount at least equal the Return Amount. The amount of Collateral required to be paid or returned hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. Cash Collateral shall be paid or returned, or caused to be paid or returned, by Pledgee and/or by any Custodian of Pledgee not later than 5:00 p.m., New York time, on the Business Day immediately following the day on which Pledgee receives such notice. All other Collateral shall be paid or returned, or caused to be paid or returned, by Pledgee and/or by the Custodian of Pledgee not later than 5:00 p.m., New York time, on the second Business Day immediately following the day on which Pledgee receives such notice. Pledgee may, at its option, satisfy such obligation through the return of Cash Collateral or Letters of Credit, or both.

(b) Except when an Event of Default or Potential Event of Default with respect to Pledgor shall have occurred and be continuing, Pledgor may substitute Collateral for other existing Collateral of equal Collateral Value upon two Business Days written notice to Pledgee. Upon payment or delivery to Pledgee and/or any Custodian for the benefit of Pledgee of the substitute Collateral, Pledgee and/or any Custodian of Pledgee shall pay or return the relevant replaced Collateral to Pledgor. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Collateral is delivered simultaneously or has been delivered to Pledgee and/or any Custodian for the benefit of Pledgee prior to the release of the Collateral to be returned to Pledgor and the security interest in, and general first lien upon, such substituted Collateral granted pursuant hereto in favor of Pledgee shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Amount shall equal the greater of the Net Exposure Amount or the Minimum Transfer Amount. Each substitution of Collateral shall constitute a reaffirmation by Pledgor that the substituted Collateral shall be subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Collateral granted pursuant hereto in favor of Pledgee.

(c) Payment and delivery of any Return Amount by Pledgee and/or any Custodian for the benefit of Pledgee in accordance with this Section 4

shall be deemed a release by Pledgee of its security interest, general first lien and right of offset granted pursuant to Section 2 hereof only with respect to such returned Collateral. In connection with each payment of any Return Amount pursuant to this Section 4, Pledgor will, upon request of Pledgee, execute a receipt showing the Collateral paid or returned to it

5. Administration of Collateral.

(a) Pledgee shall have free and unrestricted use of all Cash Collateral provided to it hereunder and Pledgee shall be under no obligation to pay Pledgor any interest or dividends with respect to such Cash Collateral. All principal and interest paid to or received by Pledgee and/or its Custodian in respect of non-cash Collateral held by Pledgee and/or its Custodian for safekeeping, shall be held or retained as additional Collateral subject to this Collateral Annex and shall be subject to the security interest in, general first lien on and right of offset against, such Collateral granted pursuant hereto in favor of Pledgee.

(b) Beyond the exercise of reasonable care in the custody thereof, Pledgee shall have no duty as to any Collateral in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. Pledgee shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession, and/or in the possession of its agent for safekeeping, if the Collateral is accorded treatment substantially equal

to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by Pledgee in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence.

(c) Unless held by a Custodian, Pledgee shall at all times retain possession or control of any Collateral delivered to it.

(d) The holding of Collateral by a Custodian for the benefit of a Pledgee shall be deemed to be the holding and possession of such Collateral by the Pledgee for the purpose of perfecting the security interest in the Collateral. Nothing in this Collateral Annex shall be construed as requiring a Pledgee to select a Custodian for the keeping of Collateral for the benefit of Pledgee.

6. Exercise of Rights Against Collateral.

(a) In the event that any Event of Default or Potential Event of Default with respect to Pledgor has occurred and is continuing, Pledgee may exercise any one or more of the rights and remedies provided under the Master Agreement, the Security Agreements, any Specified Agreement or otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to Pledgor has occurred and is continuing, or (ii) an early termination date occurs or is deemed to occur pursuant to the Master Agreement as a result of an Event of Default with respect to the Pledgor, then Pledgee may, in its sole discretion, exercise any

one or more of the following rights and remedies, without limitation, upon any other rights or remedies which may be available to Pledgee:

(i) all rights and remedies available to a secured party under the uniform commercial code of the jurisdiction in which the Collateral is being held and any other applicable jurisdiction and other applicable laws with respect to the Collateral held by or for the benefit of Pledgee;

(ii) the right to set-off any Collateral held by or for the benefit of Pledgee against and in satisfaction of any amount payable by Pledgor in respect of any of its Obligations; and

(iii) the right to liquidate any Collateral held by or for the benefit of Pledgee through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any right of equity or redemption by Pledgor (with Pledgee having the right to purchase any or all of the Collateral to be sold) and to apply the proceeds from the liquidation of such Collateral to and in satisfaction of any amount payable by Pledgor in respect of any of its Obligations in the order as Pledgee may elect.

(b) Pledgor hereby irrevocably constitutes and appoints Pledgee and any officer or agent thereof, with full power of substitution, as Pledgor's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of Pledgor or in Pledgee's own name, from time to time in Pledgee's discretion, for the purpose of (i) carrying out the terms of this Collateral Annex and (ii) taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of this Collateral Annex.

For the avoidance of doubt, it is hereby acknowledged that Pledgee shall be under no obligation to prioritize the order with respect to which it exercises any one or more of its rights and remedies provided under the Master Agreement, the Security Agreements or otherwise available under applicable law.

(c) Pledgor shall in all events remain liable to Pledgee for any amount payable by Pledgor in respect of any of its Obligations remaining unpaid after any such liquidation, application and set-off.

7. Pledgor Covenants; Representations and Warranties; Miscellaneous.

(a) Pledgor will defend the Collateral against the claims and demands of all other parties, will keep all Collateral free from all security interests or other encumbrances (except the security interest hereunder) and will not sell,

transfer, assign, deliver or otherwise dispose of any Collateral or any interest therein without the prior written consent of Pledgee.

(b) Pledgor will execute and deliver to Pledgee (and to the extent permitted by applicable law, Pledgor hereby authorizes Pledgee to execute and deliver, in the name of Pledgor or otherwise) such financing statements, assignments and other documents and do such other things relating to the Collateral and the security interest granted under the Security Agreements including any action Pledgee may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Collateral, and Pledgor shall pay all costs relating thereto.

(c) On each day on which Collateral is held by Pledgee and/or any Custodian for the benefit of Pledgee under the Security Agreements, Pledgor hereby represents and warrants that:

(i) Pledgor has good title to and is the sole owner of such Collateral, and the execution, delivery and performance of the covenants and agreements of the Security Agreements do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Collateral, other than the security interests and liens created under the Security Agreements;

(ii) upon payment or delivery of Collateral by Pledgor to Pledgee and/or any Custodian for the benefit of Pledgee, Pledgee

shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest;

(iii) Pledgee has a valid and perfected first priority continuing security interest in the Collateral, free of any liens, claims or encumbrances, except those liens, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iv) it is not and will not become a party to or otherwise be bound by any agreement, other than the Security Agreements, which restricts in any manner the rights of any present or future holder of any of the Collateral with respect hereto.

(d) This Collateral Annex has been and is made solely for the benefit of the parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(e) Pledgor shall pay on request and indemnify Pledgee against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general

first lien and right of offset granted under the Security Agreements or the execution, delivery, performance or enforcement of the Security Agreements, as well as any penalties with respect thereto (including, without limitation, costs and reasonable fees and disbursements of counsel). The parties each agree to pay the other party for all reasonable expenses (including, without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Security Agreements, and the Master Agreement.

(f) Any amendment, modification, or waiver of any provision of the Security Agreements shall be in writing and executed by both Parties hereto, and any such waiver shall be effective only for the specific purpose for which given and for the specific time period, if any, contemplated therein.

(g) Except as otherwise set forth in the Security Agreements, all notices and other communications required or permitted under the Security Agreements shall be delivered in the manner and shall be effective at the times set forth in the Master Agreement.

(h) No failure or delay by either party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(i) The headings in the Security Agreements are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

(j) If Counterparty disagrees in good faith with any determination (the "Agreed Determination") or calculation (the "Agreed Calculation") made by the Valuation Agent hereunder, the parties agree to use their best efforts to resolve such disagreement expeditiously, but in any event within two (2) Business Days. If the parties cannot resolve such disagreement within two (2) Business Days, the Valuation Agent shall appoint within two (2) Business Days the Reference Market-makers to make the relevant calculation or determination, in which case the Agreed Determination shall be the determination agreed upon by at least three of the Reference Market-makers, and the Agreed Calculation shall be the arithmetic mean of the three calculations made by the Reference Market-makers. The Agreed Determination or Agreed Calculation made by such Reference Market-makers will be binding and conclusive on the parties absent manifest error. The costs of retaining such Reference Market-makers shall be borne equally by the parties.

(k) The occurrence or designation of an early termination date on account of a material breach or event of default under the Master Agreement with respect to a party hereto ("Y") shall constitute a material breach and event of default (howsoever described) with respect to Y under all transactions and agreements between the parties hereto, whereupon the non-defaulting party ("X") or any affiliate of X shall have the right to terminate, liquidate and otherwise close out any such transactions (and Y shall be liable for any damages suffered by X and any affiliate of X as a result thereof). Upon such occurrence or designation, any

amount payable by X or any affiliate of X under the Master Agreement, any transaction with Y, or in respect of any other matured, liquidated or terminated obligation to Y will, at the option of X or any affiliate of X (and without prior notice to Y), be reduced by its setoff and recoupment against any amount(s) payable by Y to X or any affiliate of X under the Master Agreement, any transaction with Y, or in respect of any other matured, liquidated or terminated obligation of Y (and any such amount(s) payable by Y will be discharged promptly and in all respects to the extent it is so set off). MSCG and Counterparty on their own behalf and behalf of their affiliates intend that all transactions entered into between the parties and/or their affiliates be treated as mutual and part of a single, indivisible contractual and business relationship.

(l) THIS COLLATERAL ANNEX SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES THEREOF.

IN WITNESS WHEREOF, the Parties hereto have executed this Collateral Annex as of the date first above written.

MORGAN STANLEY CAPITAL GROUP INC.

By: s/ R.D. Shelton

Name: R.D. Shelton
Title: Vice President

PUBLIC UTILITY DISTRICT #1 OF SNOHOMISH COUNTY

By: s/ John P. White

Name: John P. White
Title: Acting General Manager

APPENDIX D

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1 Of Snohomish County, Washington Complainant,	)	
v.	)	**Docket No.**
Morgan Stanley Capital LLP, a California Limited Liability Corporation, Respondent.	)	

COMPLAINT OF PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON AGAINST MORGAN STANLEY CAPITAL GROUP, INC.

Pursuant to Section 206 of the Federal Power Act ("FPA"), 16 U.S.C. § 824e (1994), and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or

"FERC"), 18 C.F.R. § 385.206 (2001), Public Utility District No. 1 of Snohomish County, Washington ("Snohomish"), hereby files this complaint against Morgan Stanley Capital Group ("MSCG"). Snohomish requests that the Commission remedy unjust and unreasonable terms and conditions exacted by MSCG in a long-term power supply contract [1] with Snohomish at a time when the Western energy markets were "wildly dysfunctional."[2] Specifically, Snohomish seeks relief from the nearly nine year term of the contract and from oppressive collateralization provisions that cannot credibly be declared just and reasonable in the wake of the "market meltdown"[3] in the West.

I. SUMMARY

As a result of the dysfunctional and anti-competitive nature of the Western power markets at the time the MSCG contract with Snohomish was executed, the enormous price volatility in these markets, and the uneven bargaining power exerted by MSCG, Snohomish was forced to agree to an extremely long contract term and to the imposition

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[1] The Contract between MSCG and Snohomish ("Contract") is attached hereto as Exhibit A.

[2] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator ("ISO") and Power Exchange (PX), et al.*, 96 F.E.R.C. ¶ 61,120, at 61,521 (2001) (Opinion of Commissioner Massey, dissenting in part & concurring in part).

[3] *News Release*, "Commission Proposes to Reform California's 'Seriously Flawed' Electricity Markets With Sweeping Changes," Federal Energy Regulatory Commission (Nov. 2000).

of needlessly expensive and onerous collateralization requirements in order to obtain power needed to serve Snohomish's consumers. To remedy the effects of the Western market dysfunctions on Snohomish and its consumers, the Commission should modify or eliminate the unjust and unreasonable MSCG contract terms, as specified herein. Indeed, such relief is imperative if the Commission is to provide the "vigilant market oversight" it has promised to ensure that the new market-oriented regulatory regime espoused by the Commission "delivers value for customers better than that achieved under [traditional] regulation." [4] If MSCG's contract stands, the electric consumers served by Snohomish will be burdened for years with a contract containing material terms far worse than anything that would have arisen under the old regulatory regime.

Under the extraordinary circumstances presented here, the nearly nine year term of the MSCG contract cannot realistically meet the just and reasonable standard that Congress entrusted the Commission to enforce under the Federal Power Act ("FPA").[5] At the time this contract was entered into, the Commission had found Western spot markets were dysfunctional and there was a "critical interdependence" between unjust and unreasonable prices charged in the spot markets and prices

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[4] Bureau of National Affairs, "Enron Collapse Had No Apparent Impact on Market, Delivery to Consumers, F.E.R.C.'s Wood Says," Jan. 29, 2002, p. A-27 (quoting address of F.E.R.C. Chair Pat Wood HI to the American Public Power Association)

[5] 16 U.S.C. § 824e.

charged in the forward markets.[6] Months after this contract was executed, the Commission finally took action, as required by the FPA,[7] to remedy unjust and unreasonable prices in the spot markets and to bring down the prices that can be charged by MSCG and other suppliers under forward contracts executed in the future. The Commission's actions have finally forced the Western markets to function more like competitive markets, but the Commission has done absolutely nothing to mitigate the effects of long-term contracts that were entered into during the period of severe market dysfunction in late 2000 and early 2001, despite the fact that the Commission urged market participants to enter into long-term contracts in order to escape the extreme conditions of short-term markets.

Snohomish respectfully submits that it would be patently unfair, and a violation of the Commission's responsibilities under the FPA, to allow MSCG to maintain this unjust and unreasonable contract for the remaining eight years of its term. Each and every day that the contract remains in effect, Snohomish and its consumers are forced to relive the agony of market dysfunctions that were so serious they warranted broad-scale remediation by the Commission in other regulatory proceedings. While reliving the same events over and over again produced high comedy in Bill Murray's "Groundhog Day," forcing the electric consumers of Snohomish County to relive the market dysfunctions of 2000-

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[6] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California ISO and PX, et al.*, 95 F.E.R.C. ¶ 61,418, at 62,547 (2001).

[7] *Id.*

2001 for the next eight years will produce only prolonged financial devastation, economic dislocation, unemployment, and political opposition to the Commission's deregulatory policies. Therefore, Snohomish requests that the Commission immediately terminate the MSCG contract or, at a minimum, shorten its length to no more than one year.

Snohomish also requests that the Commission immediately terminate or reform the unjust and unreasonable collateralization terms that MSCG demanded in the contract. Over the course of the last 12 months, Snohomish has been forced repeatedly to increase the amount of collateral given to MSCG to the point where Snohomish now has an outstanding letter of credit issued to MSCG in the amount of $101 million. For a large financial institution like MSCG this amount of money may not be significant, but for a relatively small, non-profit like Snohomish, it is a significant sum that threatens the reliability of service provided to Snohomish's customers. The cost of the collateralization requirement to Snohomish is vastly disproportionate to the miniscule credit risk Snohomish, which has maintained its A+ credit rating throughout the market crisis of the last two years, represents to MSCG.

The "Mark-to-Market" valuation method for the posting of collateral, insisted upon by MSCG, is also unjust and unreasonable because: (1) the starting point is a contract price that is the product of grossly dysfunctional Western markets; (2) MSCG, a self-interested party, has granted itself the authority to define the amount of collateral, using factors such as

the forward price curve and a discount rate that can substantially increase the amount of collateral required depending on the assumptions used; (3) There is no objective standard for defining the price curve in the later years of the contract because reported data only go out five years and Snohomish has no realistic recourse to challenge the price curve defined by MSCG; and (4) MSCG does not even have an obligation to protect cash collateral posted by Snohomish and can use that collateral as it sees fit. In accordance with FERC's statutory duty to protect consumers, the collateralization provisions must be eliminated or reformed.

By granting the relief requested, the Commission would put an end to the suffering of Snohomish's consumers and allow these consumers to share equitably in relief accorded by the Commission to others. Consistent with the Commission's overarching policy goal of promoting competition, termination or substantial shortening of the term of the contract would place MSCG and Snohomish on a level playing field to negotiate a new contract in Western power markets that are now functioning more like competitive markets as a result of the Commission's recent reforms.

II. DESCRIPTION OF PARTIES

Snohomish was formed by a vote of the people of Snohomish County in 1936 to operate as a Public Utility District pursuant to Title 54 of the Revised Code of Washington ("RCW"). Snohomish is a not-for-profit, non-public distribution utility that serves approximately 240,000 residential customers and 23,000 commercial and industrial customers in

Snohomish County and on neighboring Camano Island in the State of Washington. Snohomish purchases power in the Western wholesale markets to meet the large majority of the needs of local consumers whom Snohomish is obligated to serve.

MSCG is a power marketer and public utility subject to FERC's jurisdiction under the FPA, including Sections 205 and 206 of the FPA, which require the rates, terms and conditions of wholesale power contracts executed by a public utility to be just and reasonable.[8]

III. BACKGROUND

This complaint arises out of the crisis in the "wildly dysfunctional Western power market."[9] As FERC previously has found, "deficient market mechanisms" in California, in conjunction with an imbalance of supply and demand, "resulted in a dysfunctional marketplace both in California and the remainder of the West."[10] In fact, the market dysfunctions in California led directly to a rapid escalation in the price and volatility of both the short and long-term wholesale power markets in the

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[8] *See* U.S.C. § 824d, 824e; *Southern Company Services, Inc., et al.*, 87 F.E.R.C. ¶ 61,214, at 61,848 (1999).

[9] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California ISO and PX, et al.*, 96 F.E.R.C. ¶ 61120, at 61,521 (2001) (Opinion of Commissioner Massey, dissenting in part & concurring in part).

[10] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California ISO and PX, et al.*, 95 F.E.R.C. ¶ 61,418, at 62,556 (2001).

Pacific Northwest. Because the electric systems of California and the Pacific Northwest are electrically interconnected and California suppliers rely on power purchased in the Pacific Northwest markets to supplement in-state supplies, the "serious flaws"[11] in the California market produced drastic dysfunctions in the Pacific Northwest wholesale markets.

As the Commission's own staff confirmed in a recent report to Congress, after the market dysfunctions in California occurred, "energy prices in the long-term, short-term and spot markets were high throughout the [Western] region." [12] The extraordinarily high wholesale electric prices that occurred in the Pacific Northwest during late 2000 and early 2001 demonstrate dramatically the level of market dysfunction that occurred in the Pacific Northwest. Although wholesale power prices in the Pacific Northwest historically have averaged in the range of $20 to $30 per MWh, prices for short-term power in the Pacific Northwest during late 2000 and early 2001 were regularly above $100/MWh and at times reached $500/MWh.[13] In the first two weeks of December, spot prices increased to stratospheric levels. Power was regularly trading at above

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[11] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California ISO and PX, et al.*, 93 F.E.R.C. ¶ 61,121 at 61,349 (2000).

[12] "The Economic Impacts on Western Utilities and Ratepayers of Price Caps on Spot Market Sales," F.E.R.C. Staff Report to the United States Congress, at 14 (Jan. 31, 2002).

[13] Affidavit of Michael R. McMahon ("McMahon Affidavit") at ¶ 4 and Attachment A, attached hereto as Exhibit B.

$500/MWh, and for several days the price hovered around $1000/MWh. Spot prices during that period as recorded by Dow Jones reached as high as $3300/MWh.[14] In fact, during much of late 2000 and early 2001, spot market prices in the Pacific Northwest were the highest in the country, turning the historical pattern on its head.[15]

There is, moreover, "ample empirical evidence showing that market power has been exploited successfully to raise prices" in California and the Western markets. [16] Industry experts have concluded that as a result of the withholding of capacity and other types of market power abuse, prices were approximately 15 percent above competitive levels from June 1998 to September 1999.[17] When the market crisis reached its peak in the winter of 2000-2001, spot prices were in the

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[14] Affidavit of Karin A. Bulova ("Bulova Affidavit") at ¶ 4, attached hereto as Exhibit C.

[15] Hal Bernton, "NW Utilities Get Socked the Hardest," *Seattle Times*, (Apr. 13, 2001).

[16] "An Engineering Approach to Monitoring Market Power in Restructured Markets for Electricity," Cornell University and PSERC, by C.E. Murillo-Sanchez, *et al.*, at 3 (2001), available at http://www.pserc.wisc.edu/.

[17] Severin Borenstein, James Bushnell & Frank Wolak, "Diagnosing Market Power in California's Deregulated Wholesale Electricity Marketplace," University of California Energy Institute Working Paper 064 (July 2000). *See also* Testimony of Robert McCullough, Managing Partner, McCullough Research, before United States Senate, Committee on Energy and Natural Resources (Jan. 29, 2002) (revealing that there was significant withholding of capacity in California.). A copy of this Testimony is attached hereto as Exhibit D.

range of 10 times competitive levels.[18] Indeed, there is evidence of market power abuses even in late 2001. On December 3, 2001, the day after Enron declared bankruptcy, prices at the California-Oregon Border hub dropped by 30% despite the fact that there were no fundamental market changes that could explain a drop of such magnitude. "The clear implication is that Enron may have been using its market dominance to 'set' forward prices."[19]

In the face of these severe market dysfunctions, continued reliance on the spot markets to fulfill even a small amount of Snohomish's power requirements was not a realistic option for Snohomish. It became evident after the severe price spike experienced in December 2000 that attempting to meet Snohomish's load during a similar cold-weather episode could result in a power cost increase in the range of $25 million, potentially wiping out Snohomish's rate stabilization fund, threatening its financial position with respect to its bond holders, and forcing large and unpredictable rate increases on its customers.[20]

Likewise, Snohomish had no real choice in terms of the power suppliers it chose. Following a strategy urged by FERC, [21] after the huge price spike

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[18] Murrillo-Sanchez, *et al.*, at 3.

[19] Testimony of Robert McCullough, *supra* note 17.

[20] *See* Affidavit of John P. White ("White Affidavit") at ¶ 4, attached hereto as Exhibit E.

[21] *See, e.g., San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and California Power Exchange*, 93 F.E.R.C. ¶ 61,294, at 62,003 (2000) (F.E.R.C. imposed underscheduling penalty to deter California utilities'

experienced in Western spot markets in December 2000, Snohomish quickly moved to fill out its supply portfolio with long-term contracts. On December 22, 2000, Snohomish issued a Request For Proposals ("RFP") to 17 potential sellers seeking up to 100 MW of power. Only three parties, including MSCG, were willing to sell power to Snohomish in the shape and time frame needed during 2001, and each of these parties refused to sell Snohomish any more than 25 MW of power. Thus, to obtain enough power to meet the needs of its customers and maintain reliable service, Snohomish was forced to contract with all three parties, including MSCG.[22]

Nor did Snohomish have any real choice but to enter into extremely long-term contracts. On January 1, 2001, Snohomish enacted a retail rate increase sufficient to increase its revenues by 35%, which was by far the largest rate increase in the utility's history unrelated to its involvement in the Washington Public Power Supply System nuclear project.[23] That rate increase allowed Snohomish to obtain contracts to fill its 75-100 MW need at a melded price of up to $125 per MWh.[24] If Snohomish had paid more than that price, Snohomish would have had to institute yet another rate increase,

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use of spot markets to serve load that could have been anticipated and scheduled in forward markets and encouraged utilities "to participate fully in the forward markets in order to procure a more balanced portfolio as opposed to the current excessive reliance on the spot markets.").

[22] Bulova Affidavit at 11.

[23] White Affidavit at ¶ 6.

[24] *Id.*

knowing that its power supply costs would jump by a significant, but as yet unknown, amount when its new power supply contract with Bonneville Power Administration ("BPA") commenced on October 1, 2001.[25] Hence, a rate increase was simply not practicable and the only remaining choice was for Snohomish to submit to extremely long term contracts, which was the only way the three power suppliers would agree to sell power to Snohomish within the amount of revenues that had been made available by the January 1, 2001 rate increase.[26]

The course of negotiation with respect to the price term similarly demonstrates the severity of the market dysfunction that occurred at the time and the almost complete lack of bargaining leverage suffered by Snohomish. The prices initially offered by MSCG, and by the other two suppliers, were extremely high, in the range of $135 to $290 per MWh – six to ten times the long-term average for the region. Further, MSCG and the other bidders insisted upon the right to continually revise their price offers upwards during the period of negotiation. In the space of only five working days, MSCG ratcheted the price terms of its offers for contracts to fill the remainder of 2001 from $290 to $333 per MWh and its offers for contracts that delivered through 2003 were similarly ratcheted upwards from $162.20 to $182.75 per MWh. The suppliers were not even willing to hold their prices long enough for the terms of the underlying contract

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[25] *Id.* at ¶¶ 6-10.

[26] *Id.* at ¶ 10.

to be negotiated.[27] Worse, recently revealed evidence suggests that, at the same time this contract was being negotiated, the same suppliers who were dealing with Snohomish were offering to supply other Northwest parties power under similar contracts at less than half the price.[28]

As the history of the negotiations demonstrates starkly, MSCG enjoyed hugely disproportionate bargaining leverage, and Snohomish was forced to agree to one-sided, onerous and unjust contract terms. Ultimately, Snohomish signed a contract with MSCG for a term of nearly nine years (April 1, 2001 to December 31, 2009) for a flat block of 25 MW of power at $105 per MWh.

IV. ARGUMENT

A. The Commission Has A Statutory Duty To Modify Unjust And Unreasonable Rates, Terms, and Conditions In Jurisdictional Power Sales Contracts And Explicitly Authorized The Filing Of Complaints Seeking Relief From Such Contracts

The Commission has a duty, under the FPA, to ensure that the rates, terms and conditions of jurisdictional power sales made by public utilities,

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[27] Affidavit of Karin Bulova at ¶ 8.

[28] Hal Bernton, "No Easy Escape from Enron: BPA May Be Stuck With Costly Contract," *Seattle Times*, Feb. 8, 2002 (noting that Enron entered into long-term contracts with BPA in the range of $50 per MWh in late 2000 and early 2001).

such as MSCG, are just and reasonable.[29] In the aftermath of the market failures in the West, the Commission specifically stated that any party who "believes any of its contracts are unjust and unreasonable . . . may file a complaint under FPA Section 206 to seek modification of such contracts."[30] In accordance with the Commission's instructions, Snohomish has filed this complaint. Snohomish asks that the Commission now follow through on its commitment to adjudicate forward contract complaints filed under FPA Section 206 and remedy the harm caused to Snohomish's consumers as a result of the market dysfunctions in the West and the gaming of those market dysfunctions by MSCG.

While Snohomish believes the $105/MWh price contained in the MSCG contract is unjust, unreasonable and contrary to the public interest, Snohomish is not applying to the Commission for a change in the price pursuant to Section 206 of the FPA. The MSCG contract has a fixed rate provision stating: "The rates for service specified in this Agreement shall remain in effect for the terms of this Agreement and shall not be subject to change through application to FERC pursuant to the provisions of Section 205 or Section 206 of the

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[29] 16 U.S.C. § 824e. The Commission recently acknowledged this responsibility when it adopted price mitigation measures for sales made in spot markets in California and the rest of the West. *See San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and California Power Exchange*, 95 F.E.R.C. ¶ 61,418 at 62,570 (2001).

[30] *Id.*

Federal Power Act."[31] Snohomish intends to abide by this contract term and, to the extent Snohomish discusses the excessive contract price, it is solely to explain why Snohomish believes the nearly nine year contract term and collateralization provisions are unjust and unreasonable. There is no limitation in the contract on the ability of Snohomish to apply to the Commission for a change in unjust and unreasonable terms and conditions of service under Section 206 of the FPA and this complaint seeks changes only with regard to the unjust and unreasonable contract term and collateral provisions.

B. The Nearly Nine Year Term Of The MSCG Contract Is Unjust And Unreasonable Under The Extraordinary Circumstances Presented Here

Under the extraordinary circumstances presented here, and based on the Commission's own prior findings of severe dysfunctions in the Western power markets, the nearly nine year term of the MSCG contract is unjust and unreasonable and should be terminated, or at least shortened to no more than one year. The unjust and unreasonable terms and conditions of service contained in MSCG's contract with Snohomish were extracted by MSCG at a time when the Western electricity markets were "broken."[32] In the Commission's own words, there

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[31] Contract at 7, § 39B.

[32] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and California Power Exchange,*

were "severe electric energy shortages facing California and other areas of the West"[33] and the Western electricity markets were in a state of "crisis." [34] As Commissioner Massey aptly summarized the situation: the wholesale electric market was "out of control" and "economic carnage" was spreading throughout the entire Western interconnection.[35]

The Commission has provided relief to other consumers from these market dysfunctions. As a result of "seriously flawed" market structures and rules in California, an "imbalance of supply and demand," and the potential for suppliers to "exercise market power," the Commission found that rates for certain energy sales in organized spot markets operated by the California Independent System Operator ("ISO") and California Power Exchange ("PX") were "unjust and unreasonable." [36] The Commission, therefore, ordered refunds and established a mitigation plan to bring prices in the California spot markets down to just and reasonable

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95 F.E.R.C. ¶ 61,418, at 62,573 (2001) (Opinion of Commissioner Massey concurring in part).

[33] *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 F.E.R.C. ¶ 61,272, at 61,967 (2001).

[34] *Id.* at 61,967, 61,973.

[35] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and California Power Exchange*, 95 F.E.R.C. ¶ 61,115, at 61,369, 61,367 (2001) (opinion of Commissioner Massey dissenting in part).

[36] *Id.* at 61,351-52, 61,354 (2001).

levels.[37] Because the California spot markets were not functioning in a competitive manner, the Commission's mitigation plan was designed "to produce spot market sales prices in all hours that are just and reasonable and emulate those that would be produced in a competitive market."[38]

The Commission recognized that "the California market is integrated with those of other states" in the West and that the rates charged by public utilities for spot market sales in other parts of the West may not be "just and reasonable" under current market conditions.[39] Therefore, the Commission instituted an investigation into the rates, terms and conditions of spot market sales made by public utilities in wholesale markets throughout the Western Systems Coordinating Council ("WSCC").[40] At the conclusion of its investigation, the Commission found "[t]here is a critical interdependence among the prices in the [California] ISO's organized spot markets, the prices in the bilateral spot markets in California and the rest of the West, and the prices in the forward markets," and that these markets are "inextricably

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[37] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and California Power Exchange*, 95 F.E.R.C. ¶ 61,418, at 62,545, 62,548-49 (2001).

[38] *Id.* at 62,558.

[39] 95 F.E.R.C. ¶ 61,115, at 61,356, 61,361.

[40] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California ISO and PX, et al.*, 95 F.E.R.C. ¶ 61,115.

interrelated." [41] Consequently, the Commission extended its price mitigation plan to spot market sales throughout the WSCC "to ensure that rates for sales in spot markets in California and the rest of the WSCC fall within a zone of reasonableness."[42]

Although the Commission acknowledged there was "a critical interdependence" between "prices in forward markets"[43] and the unjust and unreasonable prices charged in California's organized spot markets and bilateral spot markets in the rest of the West, the Commission did not apply its price mitigation plan directly to the forward markets because the Commission believed mitigation of spot

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[41] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California ISO and PX*, 95 F.E.R.C. ¶ 61,418 at 62,545. The Affidavit of Michael R. McMahon, accompanying this Complaint, further demonstrates the unequivocal link between unjust and unreasonable prices charged in the California spot market, prices charged in spot markets in the rest of the West, and prices charged in Western forward markets.

[42] 95 F.E.R.C. ¶ 61,418 at 62,546. Before the Commission can fix a new rate to be charged by a public utility, the Commission must find that the old rate charged by the public utility is unjust and unreasonable. *See* 16 U.S.C. § 824e. *See also Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348, 353 (1956). Hence, the Commission had to base its decision to change the spot market prices charged by public utilities in the WSCC on a finding that the rates previously charged by these utilities were unjust and unreasonable, and any claim by MSCG to the contrary is unfounded.

[43] *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Service Into Markets Operated by The California Independent System Operator Corporation and California Power Exchange*, 95 F.E.R.C. ¶ 61,418, at 62,547.

market prices would automatically serve to bring prices in the forward markets down to just and reasonable levels.[44] The Commission reasoned that:

> Applying mitigation to spot market transactions results in mitigation of generation market power in forward markets by creating a kind of competitive "standard offer" service for customers. If sellers attempt to charge excessive, non-competitive prices in forward markets, customers can avoid them by waiting to purchase in the real-time market. This puts market pressure on sellers to offer competitive prices in the forward markets. In turn, when sellers offer competitive forward prices, many buyers will prefer to purchase in the forward markets in order to gain price certainty.[45]

Prices in the forward markets did, in fact, decrease after the Commission mitigated prices in California spot markets in its April 26, 2001 Order and dropped even further when the Commission extended its mitigation plan to spot market transactions throughout the WSCC in its June 19, 2001 Order.[46] Indeed, a recent FERC staff report

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[44] *Id.* at 62,556.

[45] *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*, 97 F.E.R.C. ¶ 61,275 at 62,245 (2001) *citing AEP Power Marketing, Inc., et al.*, 97 F.E.R.C. ¶ 61,219 at 61,972 (2001).

[46] As noted in F.E.R.C.'s June 19 Order: During the week ending June 9, prices for last-minute peak power at Western trading hubs fell to less than $55/MWh from a high of about

has concluded that the Commission's price mitigation orders produced a precipitous drop in short-term market prices across the West, and market prices in the Northwest have now returned to near their long-term average of approximately $30 per MWh.[47]

While the Commission's spot market price mitigation plan effectively limited the ability of sellers to charge "excessive, non-competitive prices" in forward contracts executed after the Commission adopted this mitigation plan, the plan did nothing to address unjust and unreasonable rates, terms and conditions in forward contracts executed before the Commission adopted the plan. To fill this regulatory gap, it is imperative that the Commission now take action to remedy the harm that continues to be caused to Snohomish and its consumers under the long-term MSCG contract in this Section 206 complaint proceeding.

$170/MWh earlier in the week. This trend continued into the week ending June 16 with prices hovering between $50/MWh and $65/MWh at most of the Western power indexes. In addition, prices for Western forward contracts are also down dramatically, with year 2002 forward transactions dropping from $127 to $68/MWH, and 2003 forward contracts from $60 to $41 in the past month. 95 F.E.R.C. ¶ 61,418, at 62,546 (internal footnotes omitted).

[47] F.E.R.C. Staff Report, *supra*, note 12, at 14-16 & figure 3. Curiously, F.E.R.C. staff concludes that Western utilities "benefited" from the ability to resell power from long-term contracts into the short-term markets. *Id.* It is difficult to see how reselling power Snohomish was forced to buy at $105 per MWh for prices in the range of $20- $30 per MWh can rationally be considered a "benefit" of the Commission's regulatory regime.

Permitting MSCG to maintain this unjust and unreasonable contract for the remaining eight years of its term would violate this Conunission's statutory obligations and would be demonstrably unfair. Every day that the contract remains in effect, Snohomish and its consumers are forced to relive the agony of market dysfunctions that were so serious they caused FERC to take expansive remedial measures in other regulatory proceedings. The MSCG contract and other similar long-term contracts are the products of severely dysfunctional markets and are causing prolonged financial devastation, economic dislocation, unemployment, and political opposition to the Commission's deregulatory policies in the Pacific Northwest. Therefore, Snohomish respectfully requests that the Commission immediately terminate the MSCG contract or, at least, shorten its length to no more than one year.

By taking this action, the Commission would put an end to the suffering of Snohomish's consumers and allow these consumers to share equitably in relief accorded by the Commission to others. Consistent with the Commission's overarching policy goal of promoting competition, this action also would place MSCG and Snohomish on a level playing field to negotiate a new contract in Western power markets that are now functioning more like competitive markets as a result of the Commission's reforms.

While MSCG can be expected to argue here that the Commission should not terminate or shorten the unjust and unreasonable contract because Snohomish "voluntarily" agreed to the contract, in

the circumstances of this case, this argument rings hollow. Snohomish's decision to execute a long-term contract with MSCG can hardly be described as "voluntary," where: (1) only three suppliers were willing to sell power to Snohomish, and they refused to sell more than 25 MW each to fill Snohomish's need for a minimum of 75 MW of power to reliably serve Snohomish's customers; (2) Snohomish risked severe and unpredictable financial damage to itself and rate increases to its customers if it continued to rely on the dysfunctional spot markets to fill its power needs; and (3) Snohomish would not have enough revenue to pay for the shorter-term contracts it was offered without imposing new and substantial rate increases on its customers on top of the 35% rate increase it imposed on January 1, 2001, and the additional rate increase it expected as a result of the increased price of BPA power on October 1, 2001.[48] As the U.S. Court of Appeals for the D.C. Circuit observed: "When a condemned man is given the choice between the noose and the firing squad, we do not ordinarily say he has 'voluntarily' chosen to be hanged."[49]

Even if it could be argued credibly that Snohomish "voluntarily" executed the unjust and

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[48] Any rate increase to pay for higher-price contracts of a shorter term would have come on top of rate increases in 2001 that raised the retail rates paid by Snohomish's customers nearly 60% over rates in 2000. In fact, the rate increase experienced by Snohomish's industrial customers was substantially higher than that of other customer classes. White Affidavit at ¶¶ 6-10.

[49] *Associated Gas Distributors v. F.E.R.C.*, 824 F.2d 981, 1024 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988).

unreasonable contract with MSCG, the Commission has a statutory duty to protect the consumers served by Snohomish from the "excessive burden" imposed on them by the MSCG contract. [50] As the Commission and the courts have recognized, the modification of a fixed rate contract agreed to by a utility is appropriate if, absent contract modification, consumers – who were not parties to the contract – may be harmed by the contract.[51]

C. The Commission Has Authorized The Modification Or Termination Of Contracts In Similar Circumstances Where Market Failures Or Other Dramatic Changes Occurred In Industries Regulated By The Commission

Consistent with FERC's prior holdings in other proceedings, the unprecedented dysfunctions that existed in the Western power markets at the time the MSCG contract was executed and the dramatic change in prices that occurred after FERC took action to correct the markets, warrant modification of the MSCG contract. FERC has permitted contracts to be abrogated under strikingly similar circumstances when a "market failure" occurred

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[50] *Federal Power Commission v. Sierra Pacific Power*, 350 U.S. 348, 355 (1956).

[51] *Public Service Company of New Hampshire v. New Hampshire Service Cooperative, Inc.*, 83 F.E.R.C. ¶ 61,223, at 61,993, *reh'g granted in part*, 84 F.E.R.C. ¶ 61,129, *reh'g denied*, 84 F.E.R.C. ¶ 61,349 (1998).

previously in the natural gas industry.[52] High-priced, long-term supply contracts were executed at a time when the natural gas market was not functioning competitively and after measures were taken to correct flaws in the market, gas prices dropped significantly. To protect consumers from harm resulting from such market failure and advance its competition policies, FERC generically authorized modifications to existing contracts. As described by the Court in *Independent Petroleum Association of America v. Babbitt*:[53]

> Most producers . . . sold natural gas under long-term contracts to interstate pipelines . . . . The pipelines, regulated by the Federal Energy Regulatory Commission ("FERC"), resold the gas, also under long-term contracts, to local distribution companies which passed their purchase costs along to consumers. Because of the precipitous drop in gas prices, the

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[52] *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities, Order No. 888, F.E.R.C. Stats. & Regs. ¶ 31,036 at 31,664 (1996), order on reh'g, Order No. 888-A, F.E.R.C. Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 F.E.R.C. ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 F.E.R.C. 1161,046 (1998), *affd Transmission Access Study Group, et al. v. F.E.R.C.*, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted, People of the State of New York and the Public Service Commission of the State of New York v. F.E.R.C.*, No. 00-568.

[53] *Independent Petroleum Association of America v. Babbitt*, 1995 U.S. Dist. LEXIS 10163, at 4-5 (D.D.C. 1995) (*citing* F.E.R.C. Order No. 380; *Wisconsin Gas Co. v. Federal Energy Regulatory Commission*, 770 F.2d 1144, 1152 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1114 (1986)).

> distributors and their customers, locked into long-term arrangements, were faced with purchase costs that were significantly above-market. To alleviate the problem, FERC allowed the distribution companies to abrogate their contracts with the pipelines.

Similarly, when the Commission issued its open access transmission rulemaking to promote competition in the electric industry, the Commission permitted customers to file Section 206 complaints seeking to "shorten or eliminate the term of an existing contract."[54] Even though the Commission concluded there was no "market failure" in the electric industry at that time akin to the market failure that occurred in the gas industry, the Commission decided to give customers the opportunity to seek these types of contract modifications, even for contracts that contained *Mobile-Sierra* clauses, based on the Commission's public interest findings that "unprecedented" changes had occurred in the electric industry and it would not be in the public interest to require all customers to be held to requirements contracts that were executed under the prior industry regime, no matter what the circumstances of those contracts.[55]

The order-of-magnitude drop in market prices that occurred following the imposition of the Commission's price mitigation plan in mid-2000 demonstrates how dramatically the Commission's long-overdue actions changed the regulatory

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[54] Order No. 888-A, F.E.R.C. Stats. & Regs. ¶ 31,048 at 30,178 (1997).

[55] *Id.* at 30,193.

landscape. Moreover, based upon the Commission's actions and statements at the time the contract was executed, this sea change in FERC's regulatory policy could not reasonably have been anticipated by Snohomish.[56] In accordance with the Commission precedent cited above, the Commission should require the MSCG contract to be terminated immediately so that Snohomish and its ratepayers are not forced to live for years with a contract that is the product of a fundamentally different regulatory regime than now exists in the Western power markets.

D. Under The Extraordinary Circumstances Presented Here, The Collateralization Provisions Are Also Unjust and Unreasonable

The onerous collateralization provisions contained in the MSCG contract are further evidence of the grossly unequal bargaining power possessed by MSCG during negotiations. The collateralization provisions have imposed a financial burden on Snohomish that cannot be justified by the minimal credit risk that Snohomish represents to MSCG. As a general policy matter, Mark-to-Market collateralization provisions, such as those at issue in the contract between MSCG and Snohomish, should not be permitted by the Commission because they create substantial instability in the energy markets. In addition, as explained more fully below, there are numerous specific flaws in the collateralization provisions in the MSCG contract that render it particularly unjust and unreasonable and thus

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[56] White Affidavit at ¶ 11.

warrant reformation of the contract.

The collateralization provisions at issue here are contained in a "Collateral Annex," which, according to its terms, "forms a part of, and is subject to" the jurisdictional contract executed by MSCG with Snohomish.[57] As shown in Exhibit A and explained in the attached Affidavit of James L. Herrling, the Collateral Annex requires Snohomish, as the "out-of-the-money" party – *i.e.*, the party who is paying more under the contract than it would in a comparable market-priced transaction under current market conditions – to post cash collateral or a letter of credit.[58] Due to the dysfunctional market-based price contained in the contract and the dramatic drop in market prices that occurred since the Commission took action to correct market dysfunctions, the amount of collateral that Snohomish is required to post has grown so high that it is severely impacting Snohomish's operations and its ability to provide reliable service its customers.

The obligation to provide collateral is based upon a "Mark-to-Market valuation," which is calculated by measuring the difference between the contract value and the market value of the power to be delivered over the remaining term of the contract, reduced to present value. As explained in the Affidavit of James L. Herrling, the contract value is determined by multiplying the quantity of power to be delivered over the remaining life of the contract by the

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[57] Contract at Collateral Annex.

[58] Affidavit of James L. Herrling ("Herrling Affidavit") at ¶ 3, attached hereto as Exhibit F.

contract price. Similarly, the market value is determined by multiplying the amount of power remaining to be delivered under the contract by the market price. The market price is, in turn, determined by the "Valuation Agent" using a "forward price curve" derived from market values for long-term contracts. The "out-of-the-money" value is then derived by subtracting the market value of the remaining deliveries from the contract value, reduced to present value. If this "out-of-the-money" value exceeds the threshold value specified in the contract, the out-of-the-money party must post collateral equal to the out-of-the-money amount exceeding the threshold. The threshold amount is based upon the credit rating of the out-of-the-money party and falls as the credit rating falls, so that a declining credit rating can greatly increase the cash demands placed upon a party as its credit rating declines.

1. It Is Poor Public Policy to Allow Mark-to-Market Collateralization Provisions Such As Those Contained in the Contract At Issue Here.

It is poor public policy for the Commission to allow Mark-to-Market collateralization provisions such as those contained in the MSCG contract. In addition to the onerous terms and conditions identified above, Mark-to-Market collateralization provisions like those at issue here also introduce a strong element of instability into the electric power markets. These provisions require the out-of-the-money party to post increasingly large amounts of collateral as its credit rating declines. In the

contract at issue here, for example, if a party's credit rating declines from AA- to A+, it would be required to post $5 million in collateral above and beyond what it has already posted. If its credit rating further declines to BBB+, it would be required to post an additional $15 million.[59] If a company is party to many contracts with similar collateralization provisions, then even a relatively minor credit downgrade could force it to disgorge huge amounts of money to fulfill multiple collateralization requirements. The cash outlay could then spark further credit rating reductions, forcing the party into a downward spiral.

Based upon available reports, it appears that one reason Enron slid so quickly into bankruptcy is because Enron was party to many of these kinds of Mark-to-Market collateralization contracts. Once Enron began to divulge balance sheet irregularities, credit downgrades required it to pour increasingly large amounts of cash to meet collateralization requirements, which in turn triggered further downgradings of its credit and further cash outlays.[60] Other independent power marketers have

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[59] Contract at Collateral Annex, § 1 (definition of "Threshold Amount").

[60] *See, e.g.*, "Credit Rating Agencies Resist More SEC Oversight," Reuters Financial News Service, Feb. 7, 2002 (noting that credit downgrade triggers may further reduce credit ratings) (available at biz.yahoo.com/rf/020207/n07355209_1.html); "Moody's, S&P Say Demanding More Disclosure on Risks," Reuters Financial News Service, Feb. 6, 2002 (noting that Enron credit downgrade triggered $3.9 billion in payments, forcing bankruptcy) (available at biz.yahoo.corn/rf/020207/n06342111_1.html).

experienced similar credit downgrades, and the result has been a substantial contraction in the amount of power plant planning and construction that is occurring across the West.[61] The net result of collateralization provisions of this type, then, is to add a substantial element of instability to an industry already rocked by the instability caused by the move toward deregulated markets. Unless the Commission takes action to remedy the unjust and unreasonable nature of this type of collateralization provision in the wake of the market problems in the West, other entities – including potentially Snohomish — may too be sucked into this downward spiral.

2. Numerous Specific Flaws In The Collateralization Provisions Contained In The Contract Between MSCG And Snohomish Warrant Reformation Of The Contract

In addition to the general policy reasons why Mark-to-Market collateralization provisions should be sanctioned by the Commission, there are numerous specific flaws in the MSCG contract which warrant contract reformation. As explained more fully herein, the collateralization requirements contained in the contract at issue are unjust and unreasonable because: (1) they are based on an excessive contract price extracted in a severely dysfunctional market; (2) they are based upon a speculative and unreliable forward price curve; (3)

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[61] Ron Scherer, "Enron's Fall Ripples Into Other Firms," Christian Science Monitor, Feb. 8, 2002, p. 1.

MSCG is the self-appointed Valuation Agent; (4) MSCG has free and unrestricted use of the collateral with no obligation to protect such collateral; and (5) they impose an excessive burden on Snohomish that is grossly disproportionate to the credit risk, if any, imposed on MSCG.

a. Provisions Are Based Upon A Contract Price Which Is Excessive

To begin with, the starting point for determining the collateralization requirement is the excessive contract price which, as amply demonstrated above, grew out of a radically dysfunctional market that engulfed the entire Western Interconnection, including the Pacific Northwest. The entire collateralization mechanism cannot be sustained because it is built upon a contract value arising from a market this Commission has already found to have grossly failed to protect electric consumers from market manipulation.

b. The Collateralization Provisions Are Based Upon Speculative, Unreliable Price Curves

Under the Mark-to-Market mechanism, the market value of the amounts to be delivered under the contract is based upon a forward price curve that is unreliable. There are no published indices that extend beyond five years.[62] Hence, the forward price curve for that portion of the MSCG contract that

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[62] McMahon Affidavit at ¶ 2; Herrling Affidavit at ¶ 14.

extends beyond five years has no grounding in any market reality. To construct a price curve for the latter years of the contract, it is necessary to speculate about how the price curve might extend into those years, and even small changes in the assumptions used for the forward price curve can have a substantial impact on the amount of collateral Snohomish is required to post. [63]

c. The Commission Should Prohibit MSCG From Serving As The Self-Appointed Valuation Agent

Making matters worse, the Mark-to-Market Value relies heavily on the discount rate chosen by the Valuation Agent, and a wide variety of discount rates might be considered commercially reasonable, resulting in potentially huge variations in the Mark-to-Market Value of the contract. As demonstrated in the attached Affidavit of James Herrling, relatively small changes in the discount rate used for reducing Mark-to-Market Value to present value terms can produce enormous changes in the end result of the calculation.[64]

The onerous nature of these provisions is exacerbated by the fact that MSCG is the self-appointed Valuation Agent under the contract, which provides MSCG with the power to define the forward price curve, the discount rate, and other factors that substantially affect the amount of

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[63] Hurling Affidavit at ¶ 12.

[64] *Id.*

collateral Snohomish is required to post under the Collateral Annex. It is clearly inequitable for a party with a direct financial interest in a transaction to be allowed to unilaterally define a material term in that transaction. The fundamentally inequitable nature of this arrangement is manifest by the fact that MSCG would remain the Valuation Agent even if it became the out-of-the-money party required to post collateral to Snohomish.[65]

Snohomish's power to challenge the collateralization value delineated by MSCG is, moreover, very limited. Initially, MSCG has no obligation to disclose the forward price curve it uses to derive the Mark-to-Market Value. Further, even if Snohomish were to challenge MSCG's determination of the collateral requirement, any dispute would be resolved by four "Reference Market-makers" appointed by MSCG. There is little doubt that the Reference Market-makers would be power marketers like MSCG, and, worse yet, the four Reference Market-makers likely would all, like MSCG, be based in New York City and thus have little familiarity with the relevant markets in the Pacific Northwest.[66] The contract gives MSCG the unilateral right to appoint all four Reference Market-makers, and Snohomish has no right to challenge either the identity of the Reference Market-makers or their determination as to the

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[65] *See* Contract at Collateral Annex, § 1 (definition of "Valuation Agent").

[66] *See id.* (definition of "Reference Market-makers").

value of the collateral required under the contract.[67] In any event, even neutral and fair-minded Reference Market-makers cannot overcome the weaknesses in a methodology based upon prices arising from an unreliable forward contract price curve, as detailed above.

d. MSCG Has Free And Unrestricted Use Of The Collateral And Has No Contractual Obligation To Protect The Collateral

The onerous and one-sided nature of the collateralization requirements are manifest in several other provisions of the Collateral Annex as well. For example, MSCG or other Morgan Stanley affiliates are allowed to act as the "custodian" of the collateral posted by Snohomish, but Snohomish is not accorded the same privilege. On the contrary, if MSCG were required to post collateral, it would have to be deposited in a New York bank meeting specific capitalization requirements.[68] Further, MSCG has "free and unrestricted use" of all cash collateral provided to it by Snohomish, has "no duty as to any Collateral in its possession or control," and is under no obligation to pay interest or dividends with respect to collateral deposited with it. In addition, MSCG has disclaimed any liability for any loss of diminution in value of the collateral pledged to it.

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[67] *See id.* (definition of "Reference Market-makers"); §7(j) (mechanism for resolving disputes over valuation of collateral requirements).

[68] *Id.* at (definition of "Custodian").

Perhaps most significantly, MSCG has broad and unilateral discretion to determine what constitutes and "event of default" entitling it to "exercise" its rights to the collateral.[69] This creates enormous leverage that MSCG can use to threaten a counterparty who, for example, disagrees with MSCG with regard to the proper interpretation of the contract.

e. The Excessive Burden Imposed On Snohomish By The Collateralization Provisions Is Grossly Disproportionate To The Credit Risk, If Any, Posed To MSCG.

The collateralization provisions have placed tremendous financial strains on Snohomish's operating budget and threaten the reliability of service to Snohomish's consumers. In fact, one month before deliveries were even scheduled to begin under the MSCG contract, Snohomish received the first margin call from MSCG demanding that Snohomish post $5.5 million in collateral.[70] As the Commission acted to restore some semblance of order in the Western wholesale power markets and prices dropped precipitously compared to what they had been in early 2001, MSCG continually demanded that Snohomish post additional collateral.

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[69] Contract at § 22.1 (defining "events of default"); Collateral Annex at § 6 (setting forth rights to take possession of collateral, liquidation of collateral, etc.).

[70] Herrling Affidavit at ¶ 5.

In just a few short months, Snohomish was required to increase its letter of credit to MSCG to a total of $101 million.[71] The up-front costs to Snohomish for legal and bank fees were more than $230,000 and Snohomish will be obligated to pay $693,000 annually to secure the collateral demanded by MSCG.[72]

The amount of collateral posted by Snohomish is equivalent to nearly 20% of Snohomish's expected gross revenue for 2002, but is based on a contract which provides for only about 3% of Snohomish's power supply portfolio. In financial terms, the cost of maintaining the collateral is equivalent to an increase in the cost of power to the MSCG contract by over $2 per MWh. Illustrating the onerous nature of the collateralization provisions, if similar requirements were imposed on the remaining 97% of Snohomish's power supply portfolio, Snohomish would face added costs of approximately $15 million annually, equivalent to an increase of 7% in Snohomish's cost of power.[73] Snohomish would be forced to further increase rates to cover the additional costs and to lock up capital that would otherwise be used for additions and upgrades to its electric system. In short, Snohomish's ability to economically and reliably serve its load would be compromised.

The $101 million amount of collateral posted by Snohomish is grossly disproportionate to the credit

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[71] *Id.* at ¶ 10.

[72] *Id.*

[73] *Id.* at ¶ 11.

risk, if any, posed to MSCG from the contract at issue here. Throughout the terms of the contract with MSCG, Snohomish has maintained its financial stability, has fully satisfied all of its financial obligations to MSCG and has maintained an extremely high credit rating. Snohomish is rated A+, A+, and A1 by Standard & Poor, Fitch and Moody's Investor Services, respectively. Likewise, Snohomish has maintained a 5A1 rate from Dun & Bradstreet, the highest possible rating. During the past year, when many other utilities were downgraded from stable to negative or placed on credit watch, Snohomish has maintained very high ratings and a stable outlook.[74]

There are, moreover, many reasons why Snohomish represents an even lower credit risk than a comparable privately-owned entity with a similarly high credit rating. To begin with, Snohomish is required by statute to set its rates at a level which is high enough to provide sufficient revenues to pay all costs of operation plus all obligations on outstanding bonds.[75] In adhering to this statutory requirement, Snohomish has in fact embedded the costs of the MSCG contract in the cost of service basis for its rates, so that the rates collected by Snohomish will suffice to ensure payment of all obligations to MSCG.[76] Further, the revenue bonds issued by Snohomish contain covenants requiring that all power costs be paid and, in fact, power costs are accorded a higher priority of payments than

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[74] *Id.* at ¶ 13.

[75] RCW § 54.24.080.

[76] Herling Affidavit at ¶ 9.

obligations to Snohoinish's bondholders. In order to comply with its bond covenants, Snohomish must set its rates high enough to ensure that its revenues are 125% of its operating costs. If Snohomish fails to meet these bond covenants, it places its ability to access capital to support its operations at serious risk.[77] Hence, the chances that Snohomish will not fully honor its payment obligation to MSCG are extremely remote.

Despite the minimal credit risk represented by Snohomish, MSCG has been as intransigent in applying the terms of the Collateral Annex as it was in negotiating them. Snohomish invested considerable time and resources in developing alternative forms of collateral, such as insurance products, that would place MSCG in substantially the same position as a Letter of Credit or cash collateral. MSCG refused to consider those alternatives, and rejected, without explanation, Snohomish's use of these alternative forms of collatera1.[78]

The onerous and expensive collateral provisions imposed on Snohomish here are likewise extraordinarily disproportionate to the amount of financial security the Commission has required customers to grant public utilities in other proceedings. For example, under FERC's pro forma open access transmission tariff, a deposit is limited to no more than that amount that would be charged

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[77] *Id.*

[78] *Id.* at ¶ 8.

for one month of service.[79] Moreover, FERC has ruled that the deposit requirement may be waived when a customer is shown to be creditworthy and is not in default.[80]

In view of the fact Snohomish has the highest possible credit rating and is not in default under the contract, Snohomish respectfully submits that the collateralization provisions should be terminated immediately. In the alternative, the Commission should amend the Collateral Annex to substantially reduce the burden of those provisions represent to Snohomish by, for example, substantially increasing Snohomish's collateral threshold or substantially reducing the amount of collateral Snohomish is required to post to some figure less than 100% of the "Mark-to-Market" value of the contract. However, if the Commission does not grant this immediate relief, the Commission should at a minimum set the matter for an evidentiary hearing.

As the Commission ruled in *Northern California Power Agency v. Pacific Gas and Electric Company*, "the need for a security condition and the appropriate level of any condition present factual issues which require an evidentiary hearing to resolve."[81] Similarly, in *Nevada Power Company*,[82]

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[79] Order No. 888-A, F.E.R.C. Stat. & Reg. [Reg. Preambles] ¶ 31,048 at 30,522 (1997).

[80] *See e.g., Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 80 F.E.R.C. ¶ 61,353 at 62,210 (1997); *Midwest Independent Transmission System Operator, Inc.*, 84 F.E.R.C. ¶ 61,231 at 62,176 (1998).

[81] *Northern California Power Agency v. Pacific Gas and Electric Company*, 49 F.E.R.C. ¶ 61,366, at 62,316 (1989).

the Commission set for hearing the issue of the appropriate level of credit requirements to be posted by a public utility's customers, but suspended the hearing for a limited period and directed the parties to engage in settlement negotiations during this period to resolve credit disputes.[82] As described in more detail below, Snohomish supports the adoption of a similar procedure here.

V. SNOHOMISH REMAINS WILLING TO ENGAGE IN SETTLEMENT DISCUSSIONS WITH MSCG AND REQUESTS THAT THE COMMISSION APPOINT AN ADMINISTRATIVE LAW JUDGE TO FACILITATE A SETTLEMENT

The Western Systems Power Pool Agreement ("WSPPA"), upon which the MSCG contract is modeled, provides that a dispute between parties to a transaction subject to the WSPPA shall be referred to non-binding mediation prior to litigating. More specifically, Section 34.1 of the WSPPA provides:

> Before binding dispute resolution or any other form of litigation may proceed, any dispute between the Parties to a transaction under this Agreement first shall be referred to non-binding mediation.[83]

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[82] *Nevada Power Company*, 97 F.E.R.C. ¶ 61,324, at 62,494 (2001).

[83] Western System Power Pool Agreement, § 34.1 (May 2, 2001).

VI. CONCLUSION

Snohomish respectfully requests that the Commission terminate the MSCG contract, or at least shorten it to a term of no more than one year and modify the collateralization provisions of the contract. To the extent the Commission does not immediately grant this relief, Snohomish requests that the Commission set this complaint for an expedited evidentiary hearing, but hold the hearing in abeyance for a limited 45 day period to allow the parties to participate in a facilitated settlement process. Finally, Snohomish requests that the Commission set a refund effective date of 60 days from the date of filing of its complaint.

Respectfully submitted,

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APPENDIX E

92 F.E.R.C. ¶ 61,172

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

San Diego Gas & Electric Company

Complainant,

v.

Docket No. EL00-95-000

Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange

Respondent.

Investigation of Practices of the California Independent System Operator and the California Power Exchange

Docket No. EL00-98-000

ORDER INITIATING HEARING PROCEEDINGS TO INVESTIGATE JUSTNESS AND REASONABLENESS OF RATES OF PUBLIC UTILITY SELLERS IN CALIFORNIA ISO AND PX MARKETS AND TO INVESTIGATE ISO AND PX TARIFFS, CONTRACTS, INSTITUTIONAL STRUCTURES AND BYLAWS; AND PROVIDING FURTHER GUIDANCE TO CALIFORNIA ENTITIES

(Issued August 23, 2000)

On August 2, 2000, San Diego Gas & Electric Company (SDG&E) filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure[1] asking the Commission for an emergency order capping at $250 per MWh the prices at which sellers subject to its jurisdiction may bid energy or ancillary services into the markets operated by the California Independent System Operator (ISO) and the California Power Exchange (PX). SDG&E seeks an amendment to the market-based rate schedules of all sellers into the markets operated by the ISO and PX to restrict their bids into those markets.[2] SDG&E

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[1] 18 C.F.R. § 385.206 (2000).

[2] SDG&E states that it would be impracticable to list all such sellers in its complaint. It states that it served the complaint on all parties to various Commission proceedings involving California pricing and restructuring issues, including Docket Nos. ER98-2843, ER99-4462, EL00-91, ER96-1663, and EC96-19. It states that it also requested the ISO to distribute it electronically to the ISO's list of market participants.

requests that the Commission act as quickly as possible on the merits of its complaint.

In this order, as discussed below, we are denying SDG&E's requested immediate imposition of a price cap on all sellers in California.[3] However, we are instituting consolidated hearing [4] proceedings pursuant to section 206 of the Federal Power Act to investigate the justness and reasonableness of the rates and charges of public utilities that sell energy and ancillary services to or through the California ISO and PX, and to also investigate whether the tariffs and institutional structures and bylaws of the California ISO and PX are adversely affecting the efficient operation of competitive wholesale electric power markets in California and need to be modified. In light of the fact that many of the same issues raised here are also the subject of a fact finding staff investigation ordered by the Commission on July 26, 2000, we intend to issue a further order after the Commission reviews the outcome of the staff investigation related to California markets to take into account the staff investigation findings, as

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[3] However, we are not disturbing the California ISO's decision to set its purchase price cap at $250/MWh, *see*, Morgan Stanley Capital Group Inc. v. California Independent System Operator Corp., 92 F.E.R.C. ¶ 61,112 (2000).

[4] Hearings under section 206 may take the form of a proceeding before an administrative law judge or a hearing directly before the Commission. A hearing before the Commission may include written and/or oral presentation of evidence and arguments. We do not in this order determine which type of proceeding that will be required.

appropriate, and to address or further refine the issues set for hearing herein, as appropriate.[5]

Our goal in these proceedings is to detect and, to the extent within our jurisdiction, to resolve as expeditiously as possible, any defects in the operation of competitive power markets in California. To the extent market performance issues surface in our staff investigation or the section 206 investigation that concern the structure or independence of the ISO, the Commission will also take up these issues to the extent they are present in any RTO proposal that is filed on January 16, 2001, pursuant to Order No. 2000.[6]

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[5] The section 206 proceeding we are initiating here differs from the staff investigation in several respects. A section 206 investigation initiates a formal evidentiary process where all interested parties are assured an opportunity to present evidence and arguments on the record before the Commission. In addition, it provides a statutory mechanism for the Commission to exercise its remedial powers to change the rates, terms and conditions of jurisdictional services that are determined to be unjust, unreasonable, unduly discriminatory or preferential and, if appropriate, to order refunds. By establishing the proceeding in this order, the Commission ensures that its remedial authorities under Section 206 will be available at the earliest time permitted under the Federal Power Act.

[6] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), F.E.R.C. Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), F.E.R.C. Stats. & Regs. ¶ 31,092 (2000), *petitions for review pending sub nom.* Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, *et al.*

SDG&E's Complaint

SDG&E states in its complaint that since the restructured electric market began operation in California in April 1998, the three large investor-owned utilities in the state transferred operational control of their transmission facilities to the ISO, and began purchasing all of the energy needed to serve their retail customers through the PX. SDG&E states further that because it has completed recovery of certain stranded generation costs, the retail rate caps imposed by state statute no longer exist for it, although they are still in place for the other two investor-owned utilities.

SDG&E asserts that since the beginning of June 2000, wholesale electric prices in California have at times exceeded, often by a multiple of three or four, prices seen at comparable load levels in prior years. SDG&E cites to data showing that the PX day-ahead price for Southern California never exceeded $250 in June and July of 1999, but equaled or exceeded that level in 167 hours in 2000. SDG&E attributes this to "dysfunctional" wholesale markets, particularly at high demand levels, that allow sellers to exact prices considerably above levels that would prevail in a more fully competitive market.

SDG&E is critical of what it calls the "de-centralized" market structure and design in California, stating that the market is not capable of supplying the electricity needs of consumers at competitive prices. SDG&E states that the Commission has already seen fit to intervene when it found that the ISO's congestion management

system is in need of overhaul or replacement.[7] SDG&E argues that although the Commission did not design California's market, it has a statutory responsibility to lead the effort to fix the problems and protect consumers in the interim until reforms are in place.

SDG&E contends that the Commission's market-based rate authorizations were based on the necessary premise that the sellers lack market power and that the markets into which they are selling are workably competitive. SDG&E asserts that the energy and ancillary services markets in California are not workably competitive, at least when state-wide demand reaches 33,000 MW, and at such demand levels, wholesale prices are no longer reasonable. SDG&E asks that any seller's market-based rate authority "should be conditioned to provide that, unless or until the Commission finds that the bulk power markets for energy and ancillary services in California are workably competitive, such seller shall not submit a bid of more than $250 per MWh to supply energy or ancillary services into markets operated by the ISO or PX." SDG&E requests that the Commission act as quickly as possible on its complaint.

Notice and Pleadings

Notice of SDG&E's filing was published in the Federal Register, 65 Fed. Reg. 48,693 (2000), with comments, protests, and motions to intervene due on or before August 14, 2000.

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[7] *Citing* California Independent System Operator Corp., 90 F.E.R.C. ¶ 61,006 (2000).

The Public Utilities Commission of California (California Commission) filed a notice of intervention supporting SDG&E's request for a $250 bid cap and asking that such caps remain in place until the Commission finds based on an evidentiary hearing that workable competition exists in California and western energy and capacity markets. Pacific Gas and Electric Company and Southern California Edison Company filed motions to intervene and stated positions in support of the complaint. The Utility Reform Network filed a late motion to intervene in support of the complaint.

Answers in opposition to the complaint were filed by Dynegy Power Marketing, Inc., El Secunda Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC, (jointly); Southern Energy California, L.L.C., Southern Energy Delta, L.L.C., and Southern Energy Potrero, L.L.C. (jointly); and by Enron Power Marketing, Inc. and Enron Energy Services, Inc. (jointly). Reliant Energy Power Generation, Inc. filed an answer in opposition to the complaint and a motion to file it one day out-of-time. Merrill Lynch Capital Services, Inc. filed a motion to intervene and answer in opposition. New York Mercantile Exchange, Morgan Stanley Capital Group Inc., Duke Energy North America LLC (together with Duke Energy Trading and Marketing, LLC and Duke Energy Merchants, LLC), Williams Energy Marketing & Trading Company, and Independent Energy Producers Association filed motions to intervene and protests.

The ISO filed a motion to intervene, answer, and request for summary rejection of the complaint. The PX filed a motion to intervene with comments noting

the existence of its hedging products and disputing that the separation of the ISO and PX is a fundamental impediment to competition. The following filed motions to intervene and stated a position in opposition to the complaint: Electric Power Supply Association; Western Power Trading Forum; Portland General Electric Company; Automated Power Exchange, Inc.; and Northern California Power Agency (agrees with allegations but opposes price cap).

The following filed motions to intervene raising no issues: California Electricity Oversight Board; El Paso Merchant Energy, L.P.; the cities of Redding, Santa Clara, and Palo Alto and the M-S-R Public Power Agency; Arizona Districts; PPL EnergyPlus, LLC and PPL Montana, LLC; California Manufacturers and Technology Association; Sacramento Municipal Utility District; Metropolitan Water District of Southern California; California Department of Water Resources; Modesto Irrigation District; and Transmission Agency of Northern California. In addition, a number of individuals filed brief letters of comment on the complaint.

Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[8] the notice of intervention and the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. In addition, those respondents filing

[8] 18 C.F.R. § 385.214 (2000).

answers to the complaint are parties. We will accept the late-filed pleadings.

B. Rejection of Immediate Seller Price Cap and Institution of Hearing on Seller Rates, ISO and PX Tariffs and Market and Institutional Design

The Commission is very concerned about the impact of significant increases in retail electricity rates on residents and businesses in San Diego. We note that a number of factors have interacted to lead to these rate increases, and that many of the factors that contributed to these increases fall within the jurisdiction of state regulators and are not within the jurisdiction of the Commission, including, (1) siting of new generation and transmission facilities, (2) lack of demand-side programs that allow consumers and businesses to receive and respond to price signals, (3) rules under which SDG&E provides retail electric service which limit its actions as a purchaser of wholesale power (*e.g.*, requirements that SDG&E make all purchases through a single power exchange and restrictions on SDG&E's ability to enter into wholesale supply or risk management agreements that could protect against excessive volatility in wholesale commodity prices), and (4) retail rate designs that do not offer retail customers of SDG&E the option to arrange for stable, levelized rates. And, of course, the severe weather which has blanketed the West and exacerbated the generation supply shortage that exists in California is beyond the control of any public body.

The Commission does have jurisdiction over wholesale electric prices and a role in determining

whether and to what extent factors related to wholesale electric markets might have contributed to the increase in retail electric rates in San Diego. We take seriously volatile price increases during high load periods in California and allegations that the markets are not functioning properly. According to SDG&E, prices in June and July of 1999 rarely exceeded $150/MWh, while prices for the same period in 2000 exceeded $250/MWh in 167 hours and $500/MWh in 59 hours. SDG&E contends that these higher prices come at a time when load levels for 2000 are below the peak levels of 1999. SDG&E argues that even accounting for this year's higher natural gas prices, energy and ancillary services prices during June and July of 2000 greatly exceed the operating costs of a typical Southern California gas-fired generating unit. SDG&E concludes that the markets cannot be workably competitive if sellers are able to exact prices that are considerably above levels that would prevail in open competition, *i.e.*, sellers are able to bid and receive prices significantly above their marginal costs. SDG&E also argues that the hour-to-hour volatility in imbalance energy prices and the erratic clearing price for ancillary services is an indication that the market is breaking down when it is moderately stressed.

In addition, numerous reports prepared by the independent monitoring bodies of the PX and ISO indicate that the current market in California experiences problems during tight supply/high demand periods such that it may not yield just and reasonable rates. These reports indicate that, despite significant increases in demand, there has been no corresponding increase in the construction of new

generation. Given the lack of any meaningful demand response, this means that virtually all bids must be accepted when these shortage conditions arise. In addition, these reports indicate that most of the load in California is being met through spot market wholesale purchases rather than longer-term power sale contracts and hedging arrangements that could provide price certainty and stability. As a result of all these factors, there are periods when all generation must be accepted, regardless of the bid price, and sellers may be in a position to act on this knowledge and raise bids above the level that would be expected solely as a result of scarcity.

For all of these reasons, we conclude that a further formal investigation is appropriate to determine why anomalous prices occur at certain times, whether certain market or institutional factors cause the anomalous prices, and whether the anomalous prices are unjust, unreasonable, unduly discriminatory or preferential. While SDG&E has focused on the performance of sellers in the market, the action of sellers may in part be caused by the current market rules and institutional structures. Accordingly, we conclude that it is appropriate to investigate not only the justness and reasonableness of public utility sellers' rates in the PX and ISO markets but also to investigate the tariffs and agreements of the ISO and PX to determine whether market rules or institutional factors embodied in those tariffs and agreements need to be modified.

We note that all of the markets operated by the ISO and PX markets are highly inter-related and largely served by the same generating units. The rules for pricing and bidding for any one market can

affect the price and quantity bid into any of the other markets. Consequently, a poorly designed market not only can distort prices for its own participants but can also create high opportunity costs to participants in other markets that may, by themselves, be well-designed and functioning properly.

While we find it appropriate to institute a section 206 hearing on these issues, we cannot implement an immediate price cap of $250/MWh as requested by SDG&E because there is no record before us to support such an action. Under the Federal Power Act, upon complaint or on our own motion, the Commission may establish new rates only if it first has a record to determine that the existing rates are unjust, unreasonable, unduly discriminatory or preferential. Further, once such a finding is made as to existing rates, the Commission must have a record to support the new rate it establishes as just and reasonable. While the issues raised by this complaint are important, the Commission has no basis to conclude that SDG&E's proposal to place an immediate, arbitrary $250/MWh cap on the price that every public utility seller of energy and ancillary services may bid into the PX and ISO markets would satisfy this standard. SDG&E has provided no evidence to demonstrate that all potential sellers are able to exercise market power, has not documented a single instance of a seller exercising market power during times of scarcity, and did not attempt to show that the conditions underlying the Commission's approval of market-based rates for public utility sellers of energy and ancillary services have changed. Nor did it address

specific market or institutional factors that may be causing rates to be unjust or unreasonable. In addition, the ISO's analysis raised concerns that a cap at this level would call into question the ISO's ability to attract sufficient supply to meet the totality of California loads, and SDG&E has not provided any basis for the Commission to evaluate the reliability impacts of adopting a $250/MWh seller's bid cap. In sum, SDG&E has not met the burden of showing that an immediate, universal bid cap on all potential sellers supplying energy and ancillary services into the PX and ISO markets is justified and in the public interest.

Although we have concluded that immediate seller price caps have not been justified based on the existing record, we have not disturbed the actions taken by the California ISO, in its discretion as a purchaser of imbalance energy and ancillary services, to set its purchase price cap at $250/MWh. This action addresses SDG&E's concern that pricing volatility be mitigated. While the ISO's authority to implement this cap expires in November 2000, the ISO has recently stated that it will make a timely filing with the Commission to extend its authority. In addition, while only the ISO's markets are directly affected by its recent action, the ISO purchase price caps currently permitted by the Commission will serve to discipline prices in both the ISO and PX. We disagree with SDG&E that the effect of the maximum purchase price that the ISO will pay for energy and ancillary services on prices in the PX market is only indirect. The ISO sets a maximum purchase price at $250/MWh and the evidence to date indicates that the unconstrained PX

clearing price has not exceeded the maximum purchase price set for ISO imbalance energy (currently $250/MWh) plus the rate for replacement reserves ($100/MWh) for under-scheduled load. Buyers in the PX submit conditional bids. They offer to purchase energy and ancillary services from the PX at a price at or near the ISO's maximum purchase price because they know that if their bids are not accepted in the PX, they may still buy energy and ancillary services at the maximum purchase price in the ISO's real-time market. Thus, the ISO's maximum purchase price effectively disciplines prices in the PX markets.

C. Congestion Management and Market Redesign

SDG&E asserts that the ISO's congestion management and market structures are flawed and in need of overhaul. In support of its assertion, SDG&E points to an order issued by the Commission on January 7, 2000, in which the Commission directed the ISO to file replacement congestion management and market approaches.[9] Furthermore, SDG&E expresses its concern that, for a number of reasons, the congestion management and market reform efforts being pursued by ISO stakeholders will not produce meaningful results. SDG&E indicates that it is prepared to work with the ISO to develop alternative reform proposals; [10] however,

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[9] *See* California Independent System Operator Corp., 90 F.E.R.C. ¶ 61,006 (2000) (*California ISO*).

[10] Notably, SDG&E indicates its preference that the ISO adopt the market and congestion management structures

SDG&E's complains that the ISO stakeholder process has, in SDG&E's judgment, been ineffective with respect to these issues.

Various interveners contend that SDG&E's arguments are premature. In particular, the ISO notes that in initiating the ISO's market redesign, the Commission stated that it should be pursued with input from all stakeholder groups, and it argues that SDG&E is attempting to circumvent that process.[11]

We agree with Interveners. In *California ISO*, the Commission found the ISO's existing congestion management structure to be flawed, and, on that basis, we directed the ISO to develop and submit to the Commission a comprehensive congestion management and market redesign. Moreover, as noted by the ISO, we stated that such a redesign should be pursued with input from all stakeholder groups, as well as from the ISO's Market Surveillance Committee. The reform efforts have been the subject of extensive public review and comment and are nearing completion. Accordingly, we reject SDG&E's arguments at this time. We will defer any consideration on the merits of the ISO's reform efforts until the earlier of the ISO's filing of its reform proposal or the date which the Commission issues a supplemental order in this proceeding.

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currently in use by the PJM and New York Independent System Operators. SDG&E at 7.

[11] ISO Answer at 6, *citing California ISO*, 90 F.E.R.C. at p. 61,014.

D. Other Available Methods to Reduce Impact of Spot Market Volatility

SDG&E cites a number of problems that contribute to produce the unsatisfactory results facing its retail customers, including its exposure to spot market price volatility. In its complaint, SDG&E states that under California's restructuring policy it remains a "default" service provider for residential customers that have not chosen other energy service providers. SDG&E states that it will continue until directed otherwise to provide service to these customers by passing through the PX and ISO spot market wholesale price.

According to many of the comments, SDG&E has chosen not to purchase risk management tools that were and are available and that would have provided price certainty during periods of short supply. Furthermore, SDG&E appears to be the only major investor-owned utility in California that had not sought state commission authority to hedge its price risks through forward contracts which are designed to "lock-in" a specific price in advance of spot or real-time market activities. We note that other Interveners argue that the price cap proposal will penalize those market participants that hedged against price volatility relative to those market participants that chose to remain exposed to the spot markets. They argue that SDG&E should not be sheltered for the consequences of its decision not to protect its retail customers and remaining fully exposed in the spot market, when other participants made decisions to hedge their risks.

It is unclear whether SDG&E's failure to purchase hedging instruments for its retail operations is due to state regulatory policies or its business decisions. A retail rate design that exposes consumers to the volatility of commodity prices would be extraordinary, particularly when consumers do not have the ability to receive or respond to price signals. While the Commission has no authority over retail electricity rates nor authority to rule on the prudence of SDG&E's provision of retail electric service, we would expect any responsible retail supplier to rely on a portfolio of resources and to turn to the spot market only to engage in economy transactions or to meet portions of its load that could not be predicted well in advance or which were not anticipated due to resource outages greater than are covered by prudent reserves. We note that responsible hedging in the forward markets will greatly reduce price volatility for SDG&E's retail customers even within the limits established by the California Commission. [12] The Commission has approved a number of recent filings by the Cal PX and its Cal PX Trading Services (CTS) division that enhance and expand wholesale forward market services (*e.g.*, block forward contracts for balance-of-the-month, monthly and multi-year). We encourage SDG&E to discuss with the California Commission the use of all available hedging tools to prudently manage the price risks associated with the retail market.

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[12] For example, SDG&E currently has the ability to obtain a hedged position in the wholesale market at a price below $60/MWh. Morgan Stanley at 4.

E. Other Market Reforms

The record indicates that a current market problem is underscheduling of loads and generation in the Cal PX Day ahead and Hour Ahead markets. In some hours as much as 25 percent of system needs were met in the ISO real-time market. This significant level of under-scheduling is largely attributable to the different market incentives faced by buyers and sellers. We are concerned that this increasing level of market activity in the real-time market raises significant reliability and economical concerns. For example, if there is insufficient supply in the ISO markets, then the ISO must procure additional supplies out-of-market (OOM) at the last minute in order to meet its needs for the operating day. Historically, the ISO procures on a daily basis only the resources needed for the operating day. Not only does this procurement practice put pressure on the grid operator to secure needed resources at the last minute, but the practice is uneconomical. Such spot-market purchases are not subject to the ISO's buyer's cap. Furthermore, because the ISO is the supplier of last resort for these services, when OOM calls are made, suppliers realize that the ISO is in a must-buy situation.

In an effort to address this problem, we direct the ISO to immediately institute a more forward approach to procuring the resources necessary to reliably operate the grid. Specifically, the ISO should anticipate the need for such additional resources based on forecasted peak periods. We direct the ISO to factor these reforms into an analysis of the need for and level of purchase price caps and to include

this analysis as support for any filing it makes to extend its purchase price cap authority.

F. Refund Effective Date

In cases where the Commission institutes a proceeding on complaint under section 206 of the Federal Power Act, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after the filing of the complaint, but no later than five months subsequent to the expiration of the 60-day period. In cases where the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's intent to institute a proceeding in the Federal Register, and no later than five months subsequent to the expiration of the 60-day period. We will establish the refund effective date in Docket Nos. EL00-95-000 and EL00-98-000 60 days from the date on which notice of our initiation of the investigation in Docket No. EL00-98-000 is published in the Federal Register.

We note that although the Commission is statutorily required to establish a refund effective date whenever it institutes a proceeding under section 206 of the FPA, it is not required to order refunds at the end of the proceeding.[13] Refunds are

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[13] Under section 206, if the Commission finds that any public utility's rates, charges or classification, is unjust, unreasonable, unduly discriminatory or preferential, it shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. Section 206 provides that at the conclusion of the proceeding, the

discretionary. Moreover, any attempt to establish a just and reasonable price to serve as the basis for a refund calculation would be extremely difficult to the extent that it would require the Commission to reconstruct economic decisions that would have been made under different circumstances. In addition, in the context of market-based rates and a competitive market, refunds may not be the appropriate remedy to address any competitive problems that may be found. Thus, in establishing a refund effective date in these dockets, we wish to emphasize that, while refunds would ultimately offer some level of restitution to California ratepayers, they may be an inferior remedy from a market perspective and not the fundamental solution to any problems occurring in California markets. Further, we are cognizant of the effect that potential refund liability could have on public utility sellers in the California ISO and PX markets and we emphasize that while we must protect ratepayers, we also do not intend to undermine the financial stability of public utility sellers. We emphasize these points not to prejudge the issue of whether the Commission will find it appropriate to order refunds, but rather to ensure that all parties are aware of the statutory framework and the complexity of the issues raised in this proceeding. Any decision whether or not to impose refund obligations will be based on our findings

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Commission may order a public utility to make refunds of any amounts paid for the period subsequent to the refund effective date through a date 15 months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate the Commission orders to be thereafter observed and enforced.

regarding just and reasonable rates and a balancing of consumer and investor interests.

G. Consolidation and Further Orders

Because Docket Nos. EL00-95-000 and EL00-98-000 raise common issues of law and fact, we will consolidate them for purposes of hearing and decision. Accordingly, any party who has moved to intervene in Docket No. EL00-95-000 will be considered to be a party to the consolidated proceeding. We shall also issue further orders in this proceeding after we consider information related to California markets to be provided by the staff investigation ordered on July 26, 2000. In our July 26, 2000 Order Directing Staff Investigation, the Commission directed staff to undertake a fact-finding investigation of the conditions in electric bulk power markets (including volatile price fluctuations) in various regions of the country and report its findings to the Commission by November 1, 2000. Because of recent events in the ISO and PX markets, we will direct staff to focus on the California and Western region as soon as possible. By having the benefit of the fact-finding results, we will be better able to further narrow the focus of the hearing ordered herein, as appropriate.

The Commission orders:

(A) SDG&E's request for the imposition of a price cap on sellers into the California markets is hereby denied as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by

the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket Nos. EL00-95-000 and EL00-98-000 concerning the justness and reasonableness of the rates, charges, and practices of public utility sellers of wholesale power into the California ISO and PX markets and of the California ISO and PX tariffs, agreements and institutions, as discussed in the body of this order.

(C) The hearing ordered in Ordering Paragraph (B) above shall be held in abeyance pending a further Commission order, as discussed in the body of this order.

(D) Docket Nos. EL00-95-000 and EL00-98-000 are hereby consolidated for the purposes of hearing and decision.

(E) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of section 206 proceedings in Docket No. EL00-98-000, and we direct the ISO and PX to electronically serve this notice upon their respective list of market participants and to immediately post a copy of this order on their webpages.

(F) The refund effective date in Docket Nos. EL00-95-000 and EL00-98-000, established pursuant to section 206(b) of the Federal Power Act, will be 60 days following publication in the Federal Register of the notice discussed in Ordering Paragraph (E) above.

By the Commission. Commissioner Massey dissented in part with a separate statement attached.

(SEAL) Commissioner Hébert concurred with a separate statement attached.

s/ Linwood A. Watson, Jr.
Linwood A. Watson, Jr.,
Acting Secretary.

92 F.E.R.C. ¶ 61,172

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

San Diego Gas & Electric Company

Complainant,

v.

Docket No. EL00-95-000

Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange

Respondent.

Investigation of Practices of the California Independent System Operator and the California Power Exchange

Docket No. EL00-98-000

(Issued August 23, 2000)

HÉBERT, Commissioner, *concurring*:

I write separately to explain my position on one of the issues raised in today's order. In my opinion, California consumers are not adequately served by the Commission's selection of possible refund relief. If it were up to me, I would refrain from adopting a refund effective date. If a refund effective date were in fact required by the Commission's institution of a proceeding under section 206, as amended by the Regulatory Fairness Act, I would choose a different refund effective date. Specifically, I would select the latest possible refund effective date (7 months from the date of publication of the investigation in EL00-98-000 in the Federal Register) rather than the earliest date (60 days from the date of Federal Register publication).

I understand that the selection of a later refund effective date would be contrary to the Commission's standard practice, repeated here, of selecting the earliest possible date. In the present circumstances, however, the interest of California consumers justifies a departure from standard practice. That is because the Commission's investigation of practices of the California ISO and PX is tied to its ongoing investigation of wholesale power practices throughout the United States. The Commission is unlikely to conclude either of its investigations prior to the refund effective date instituted in today's order. That means that in the intervening period – after the refund effective date but before the conclusion of the Commission's investigations – wholesale power suppliers into California markets will not know for certain the price they ultimately will be allowed to recover.

I appreciate the language in today's order, slip op. at 12-13, that indicates that refunds may not represent an appropriate remedy, in the context of market-based rates and competitive markets, to address any identified competitive problems. Nevertheless, the fact remains that a later refund order remains a possibility, no matter how remote. This looming contingency will deter power suppliers from entering capacity-starved California markets. The possibility of a retroactive price adjustment, just like the imposition of price caps, acts to undermine precisely the type of reliability of service and robustness of competitive markets that the Commission (and all market participants) claim to vigorously support.

Consumers are best served by regulatory policies that promote market entry and ensure that electricity supply will be available to meet demand. Directives from regulators and politicians to make refunds or release emergency funds may offer some relief in the short-term. In the long-term, however, electricity consumers can be assured of low prices and reliable service only if entrepreneurs have the motivation to build plants and string wires. Without badly-needed capital investment, capacity-limited regions such as southern California will continue to lurch uncertainly from summer to summer.

In all other respects, I agree with the determinations of the Commission in today's order.

Therefore, I respectfully concur.

s/ CLM by RMS

Curt L. Hébert, Jr.
Commissioner

92 F.E.R.C. ¶ 61,172

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

San Diego Gas & Electric Company

Complainant,

v.

Docket No. EL00-95-000

Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange

Respondent.

Investigation of Practices of the California Independent System Operator and the California Power Exchange

Docket No. EL00-98-000

(Issued August 23, 2000)

MASSEY, Commissioner, *dissenting in part*:

There is a crisis of confidence in California wholesale electricity markets that threatens to erode the political consensus necessary to sustain a market-based approach to regulation. In these circumstances, the Federal Energy Regulatory Commission must act forcefully and decisively to reassure California market participants, policymakers and consumers that federal regulators will insist that jurisdictional wholesale markets produce consumer benefits and just and reasonable rates. I would grant the relief requested in the complaint and would cap bids into the California ISO and PX markets at $250/Mwh[1] as a temporary stopgap measure pending the outcome of the section 206 investigation initiated by today's order. I am convinced that such a cap is necessary to ensure just and reasonable rates during our investigation.[2]

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[1] In order to provide the ISO with the flexibility to maintain reliability, I would not apply the bid cap to Out of Market calls to out of state generator resources or to energy payments in the Summer 2000 Demand Relief Program currently in effect.

[2] The majority order notes that the ISO's existing $250/MWh purchase price cap effectively limits bids into California, and this appears to be true. Rather than rely totally upon the ISO for temporary price relief, however, this Commission must take firm responsibility for prices in jurisdictional wholesale markets. In most other respects, I agree with the conclusions reached by the majority order. In particular, I endorse opening an expedited section 206 investigation and setting the earliest possible refund effective

In recommending that a price cap be put in place now, I am motivated by a deep concern about the high prices in wholesale markets in California. The Commission has a statutory duty to ensure that wholesale prices are just and reasonable. This is the Commission's fundamental consumer protection responsibility, and the Federal Power Act provides no exception for poorly functioning markets. Indeed, the Commission's primary rationale for promoting market-based policies has been that markets would produce consumer benefits and lower prices compared to cost of service regulation.

There are sufficient indications in this record that California wholesale markets are not producing prices that are just and reasonable. California wholesale electricity costs for June 29 of this year were seven times what they were for the same date in 1999 ($340 million vs. $45 million) even though energy usage was only about 3% more.[3] Southern California Edison states that during the month of June, 2000, the total cost of electricity (energy and ancillary services combined) charged to the California market was nearly half of California's total electricity cost for all of 1999. In two separate five-day periods in June, 2000 (when demand was at least 3,000 MW to 5,000 MW below the projected

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date, although I disagree with the portion of the text that appears to characterize the prospects for refunds as unlikely. In any event, if refunds are unlikely, it is even more incumbent upon the Commission to ensure that unreasonably high prices are mitigated during the pendency of our investigation.

[3] See Attachment B to Notice of Intervention of the Public Utilities Commission of the State of California.

annual peak) California's total cost of electricity exceeded $1 billion, with one of those five day periods reaching $1.3 billion.[4] SDG&E provides a comparison of final PX day-ahead prices for the Southern California zone for June and July during 1999 and 2000. During June and July of 1999, prices rarely exceeded $150/MWh even during the highest load levels. During the same period this year, prices have multiplied to three and four times the levels reached last year whenever load levels exceed 33,000 MW, according to SDG&E.[5] The California Public Utilities Commission states that every analysis of the California markets since their opening has found substantial exercise of market power.[6] In these circumstances, the confidence of California consumers in wholesale markets may quickly erode.

The record supports the conclusion that during periods of high demand in California, generator bid prices are virtually unrestrained by the forces that would apply in competitive markets for other commodities. In other markets besides electricity, when the price is too high, consumers purchase less and this in turn has a substantial dampening effect on price. In the California wholesale electricity markets, the willingness of purchasers is largely unaffected by price, and sellers understand this dynamic. In fact, the ISO's Department of Market Analysis concluded that when demand exceeds 40

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[4] Motion to Intervene and Response of Southern California Edison Company.

[5] Complaint of San Diego Gas & Electric Company.

[6] Notice of Intervention of the Public Utilities Commission of the State of California, at 8.

GW "there is no constraint on how high [generators] might raise their prices in the absence of price caps."[7]

This lack of demand responsiveness appears to have the strong tendency to influence generator bids sharply higher. In high usage hours where no market forces restrain an unbridled price runup, a large transfer of wealth from purchasers to sellers can occur rapidly because all sellers are paid the highest market clearing price. The high prices that wholesale purchasers pay are ultimately passed through to retail consumers, either immediately or over some period of time.[8]

The complainant and interveners identify other serious problems as well in California wholesale markets. The siting of generation is lagging rather sharp increases in demand, which makes it likely that during peak usage all generator bids, regardless how high, must be accepted. There is limited transfer capacity over high voltage transmission wires into California. There have been very limited hedging and forward contracting by wholesale purchasers who have been required by state policy to make the bulk of their purchases through the ISO and PX spot markets. Serious questions are raised about the wisdom of the somewhat unique California market design, required by state law, that provides for separate ISO and PX markets. In addition, this Commission has already declared that the ISO's

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[7] *Id.*, at 7.

[8] Narragansett Electric Co. v. Burke, 381 A.2d 1358 (1977), cert. denied, 435 U.S. 972 (1978). Nantahala Power & Light Co. v. Thornburg, 476 U.S. 953 (1986).

current congestion management system must be completely overhauled.

I do not believe that customers must be required to bear the full economic brunt of the poorly functioning market and high prices that these problems create. I am pleased that the Commission is launching a section 206 investigation, and it is my hope that we will leave no stone unturned in investigating and proposing market-based solutions that will lead to just and reasonable prices.

I must point out, however, that neither the FERC nor state policymakers, acting in isolation from each other, can solve all of these market flaws because our respective jurisdictions are sharply delineated under existing law. State policymakers cannot effectively define or police market power in interstate wholesale markets. They cannot require a wholesale market structure, based upon an efficiently operating interstate transmission grid, that will produce just and reasonable rates. These are federal responsibilities. By the same token, under existing law the FERC cannot site the generation and transmission facilities that are necessary to bring supply and demand into equilibrium, and has no direct authority to require purchasers of power to hedge price volatility risk in forward or financial markets. These are state responsibilities. Both federal and state policymakers have a role in pursuing policies that will facilitate an effective and price-dampening demand side response (where, for example, customers bid "negawatts" into the market).

In short, high prices in California may not ultimately be reduced without a joint effort by federal and state policymakers. We must work together to solve the problems at hand, including joint proceedings and hearings as appropriate.

I would not recommend a $250/MWh bid cap as a long term solution to these market flaws. I am very much aware that the installation of additional generation facilities is a key part of the solution in California, and our policies must not discourage that investment. Nevertheless, I am convinced that this temporary price cap is necessary pending the implementation of measures to ensure that California wholesale markets produce just and reasonable rates.

For these reasons, I respectfully dissent in part to today's order.

s/ William L. Massey

William L. Massey
Commissioner

APPENDIX F

93 FERC ¶ 61,129

FEDERAL ENERGY REGULATORY
COMMISSION
WASHINGTON, D.C. 20426

November 8, 2000

In Reply Refer To:
Vector Pipeline L.P.
Docket Nos. CP98-133-005, CP98-133-006, CP98-134-004, CP98-134-005, CP98-135-004, RP00-586-000

Vector Pipeline L.P.
10201 Jasper Ave.
Edmonton, Alberta T5J 3N7
Canada

Attention: Gus Hildebrandt, Director, Commercial

Reference: FERC Gas Tariff, Original Volume No. 1.

Ladies and Gentlemen:

Vector Pipeline L.P. (Vector) is a newly constructed interstate pipeline which the Commission certificated in a series of orders issued

in 1998 and 1999.[1] Vector will transport gas supplies from a natural gas hub in Chicago to the U.S. Canadian border near St. Clair, Michigan. Vector now plans to start service on December 1, 2000, and has made a series of filings for that purpose: (1) Vector filed its actual tariff as required by the Commission's October 19, 1998 order making a preliminary determination (PD) that its certificate application should be approved, (2) Vector filed an application to amend its certificate to adjust the recourse rates, and (3) Vector has proposed new transportation services.[2] These filings are discussed below and conditionally accepted effective December 1, 2000.

Certificate Amendment in Docket No. CP98-133-006, et al.,

On June 27, 2000, Vector filed an application in Docket No. CP98-133-006, *et al.*, to amend its certificate of public convenience and necessity and to revise the initial recourse rates prescribed in the underlying proceeding in Docket No. CP98-133-000, *et al.* Specifically, Vector requests that the

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[1] *Vector Pipeline L.P., Preliminary Determination on Non-Environmental Issues*, 85 F.E.R.C. ¶ 61,083 (1998); Order on Rehearing and Issuing Certificates, Granting Natural Gas Act Section 3 Authorizations, 87 F.E.R.C. ¶ 61,225 (1999); *Order on Rehearing and Amending Certificates*, 89 F.E.R.C. ¶ 61,242 (1999); Order Denying Rehearing and Order on Complaint, 92 F.E.R.C. ¶ 61,039 (2000).

[2] Vector filed its Order No. 637 pro-forma compliance filing, in Docket No. RP00-585-000, which is not addressed in this order.

Commission amend its certificate to revise the level of the recourse rate, set in the PD for the first year at $0.267 per Dth, downward to $0.248 per Dth, to reflect the following changes to the initial ratemaking methodology and cost-of-service components: (1) adjusting Vector's rate base to update the 1997 capital cost estimate to reflect actual costs already incurred or under contract and to reflect more accurate estimates, with a corresponding revision of AFUDC; (2) updating Vector's projected cost of debt, to reflect Vector's present contractual base and credit position, as projected by Vector's financial advisor; and (3) changing the depreciation method from straight-line to that already used in Vector's levelized negotiated rate, specifically the reverse sum-of-the-years digit method, and in addition adjusting the form of its initial rate structure by instituting (a) cost allocation to IT and other services and (b) zone rates as follows:

Zone 1 (to Milepost 43)	$0.346 per Dth
Zone 2 (to Milepost 333)	$0.2556 per Dth

Tariff Compliance in Docket No. CP98-133-005, et al.,

The PD issued in this proceeding also ordered Vector to submit revised tariff sheets not less than 30 days and not more than 60 days prior to its proposed start of operations.[3] On September 29, 2000, in Docket No. CP98-133-005, *et al.*, Vector filed the referenced tariff, and accompanying tariff sheets, in compliance with the Commission's order, stating

[3] 85 F.E.R.C. at 61,307.

that it planned to commence service on November 1, 2000.[4] In general, the tariff reflects the pro forma tariff filed in its original application. The tariff has, however, been revised to include not only the changes required by the underlying certificate orders, including the GISB Standards adopted by the Commission in Order No. 587, *et seq.*, but also other enhancements such as the standard provisions that allow Vector to enter into negotiated rate agreements for service. Vector simultaneously filed in Docket No. RP00-586-000 a proposal for new transportation services pending review of Vector's Order No. 637 pro forma compliance filing in Docket No. RP00-585-000.

Vector states that to the extent that its September 29 filing adds improvements which may not be in strict conformance with the requirements of a compliance filing under Section 154.203 of the Commission's regulations, it requests that the Commission grant such waiver as may be necessary to place into effect the filed tariff sheets.[5] Vector also states that instead of the rates that would be derived

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[4] *See* Appendix A

[5] The Commission's regulations at 18 C.F.R. § 154.203(b) (2000) provide that:

> [f]ilings made to comply with Commission orders must include only those changes required to comply with the order. Such compliance filings may not be combined with other rate or tariff change filings. A compliance filing that includes other changes or that does not comply with the applicable order in every respect may be rejected.

from the directions in the PD order, the rates and charges pro-posed to be effective for recourse service under Rate Schedule FT-1 and Rate Schedule IT-1 are the rates included in the certificate amendment in Docket No. CP98-133-006, *et al.*

On October 6, 2000, Vector filed a letter with the Commission, stating that due to unusually excessive rainfall in the construction zone, it needs to defer the projected in-service date from November 1, 2000 to December 1, 2000. Vector therefore now requests an effective date of December 1, 2000. It also requests a waiver of Ordering Para-graph (H) of the PD and section 154.207 of the Commission's regulations, both of which require that tariff filings be made no less than thirty (30) and no more than sixty (60) days prior to the effective date.

New Services in Docket No. RP00-586-000

Also on September 29, 2000, in Docket No. RP00-586-000, Vector filed revised tariff sheets to propose three new services, a park and loan service, a title transfer tracking service, and a management balancing service.[6] Vector states that the proposed interruptible park and loan service under Rate Schedule PALS-1 is intended as a means of dealing with shipper imbalances in preference to the imposition of penalties. Vector states that whenever operationally possible, it will offer shippers the option of either parking or loaning gas, on an interruptible basis, under Rate Schedule PALS-1. Vector's proposed rate for PALS-1 service is a

[6] *See* Appendix B

maximum of $0.2556 per Dth and a minimum rate of $0.00 per Dth. Vector states that the maximum PALS-1 rate is the same as its maximum interruptible rate for Zone 2 service (*i.e.*, service from Milepost 0 to the terminus of the pipeline at Milepost 333), which is the 100% load factor equivalent of Vector's Zone 2 firm rate under Rate Schedule FT-1. Vector states that it may choose to discount the PALS-1 rate, where market circumstances warrant, on a not unduly discriminatory basis.

Vector states that it also is proposing a title transfer tracking service under Rate Schedule TTS, where Vector follows the trades of gas supply effected by shippers and others who wish to use the Vector system as a trading mart. Vector states that such changes in gas ownership may take place at any point on the Vector system that has been designated by the TTS customer and accepted by Vector. Vector states that the proposed rate for TTS service is a maximum of $0.01 per Dth and a minimum of $0.00 per Dth, which reflects anticipated operation and maintenance (O&M) costs that Vector will incur in order to render the service. Vector states that it may choose to discount the TTS rate, where market circumstances warrant, on a not unduly discriminatory basis.

Vector also states that it is proposing a balancing management service, under Rate Schedule MBA, under which shippers have the opportunity to contract with third parties for imbalance management. Vector contends that the MBA service allows a gas customer, which can be a Vector shipper

or an end-user connected to the Vector system, to contract with a third party for balancing, with Vector managing the balancing on behalf of the balancing provider. Vector con-tends that this service allows the balancing customer to vary its takes of gas on an hourly basis different from the uni-form requirement in the tariff while maintaining the overall integrity of the system by adjusting the gas takes of the balancing provider to compensate. For this reason, the balancing provider must be able to provide Vector with gas on a firm basis. Vector states that it will manage the balancing service for the balancing provider. The rate Vector proposes to charge for this administrative service is a maximum of $0.02 per Dth and a minimum of $0.00 per Dth, reflecting anticipated operation and maintenance (O&M) costs that Vector states it will incur in order to render the service. Vector states that it may choose to discount the MBA rate, where market circumstances warrant, on a not unduly discriminatory basis.

With respect to imbalance tolerances, Vector states that it has incorporated the Commission's requirement that imbalances which do not cause system problems should not incur a penalty. Thus, Vector contends that as long as a shipper's imbalance does not contribute – together with the imbalances of all other shippers on the system – to a variance of 5 percent from the target line-pack (i.e., the optimum level needed for system operations on any given day), the shipper incurs no imbalance charge. If, however, these conditions are not present, a shipper – in a noncritical period – could be assessed an imbalance charge of $0.10 per Dth for

that portion of shipper's net imbalance that exceeds the greater of 5 percent or 100 Dth. Where a shipper has created an imbalance and failed to resolve it through available means during an operational flow order (OFO) period, Vector states that the imbalance charges are more severe, starting at $25 per Dth plus a daily index price for imbalances in the 3 percent to 7 percent range. Vector states it has provided for the netting and trading of imbalances.

Discussion

Vector is a newly constructed pipeline, a joint US/Canadian business venture. More than two years have passed since the PD addressing Vector's pro forma tariff provisions was issued. Vector and its customers have engaged in a collaborative process to develop these tariff provisions. No one has protested Vector's filing, its pipeline capacity is mostly subscribed, and its customers support approval of Vector's tariff so that Vector can begin operations. Therefore, the Commission will accept Vector's proposed tariff, and accompanying tariff sheets, in Docket No. CP98-133-005, *et al.*, and the tariff sheets in Docket No. RP00-586-000, to become effective on the later of December 1, 2000 or Vector's actual in-service date, subject to further review in Vector's Order No. 637 compliance in Docket No. RP00-585-000.

While Vector's filing in Docket No. CP98-133-005 to comply with the PD goes beyond pure compliance in certain respects, the Commission will grant waiver of Section 154.203 of its regulations, which provides that filings made to comply with

Commission orders must include only those changes required to comply with the order. This case is unlike a proceeding involving a pipeline already in operation with an approved tariff on file, where rejection of a compliance filing for failure to comply with section 154.203 would not affect the continued operation of the pipeline. In this case, however, because Vector is a newly certificated pipeline with no ongoing operations, any major alteration of the tariff would preclude Vector from beginning its operations on the proposed in-service date. Therefore, in these circumstances, in order to enable Vector to begin its operations on schedule as its customer desire, and in light of the fact no one protests Vector's filing, the Commission will grant waiver of Section 154.203 of the Commission's regulations.

Since Vector has stated that its pipeline now cannot commence service until December 1, 2000, the Commission grants Vector's request for a waiver of Ordering Paragraph (H) of the PD and section 154.207 of the Commission's regulations, which require that tariff filings be made no less than thirty (30) and no more than sixty (60) days prior to the effective date. This will allow the various tariff sheets accepted here to take effect on the later of December 1, 2000 or the in service date of Vector's pipeline.

Finally, our acceptance of Vector's filings subject to further review in Vector's Order No. 637 compliance proceeding is consistent with Vector's acknowledgment in the October 6 letter that approval of the tariff does not prejudice the

Commission's ability to review the tariff for Order No. 637 compliance purposes and issue appropriate orders as required.

Unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.[7]

By direction of the Commission.

s/ Linwood A. Watson, Jr.
Linwood A. Watson, Jr.,
Acting Secretary.

cc: All Parties

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[7] We note that in its motion to intervene in Docket No. RP00-586-000, Northern Indiana Public Service Company (Northern Indiana) filed comments stating that the Commission should accept the tariff provisions relating to overrun quantities and imbalances subject to the outcome of the proceeding in Docket No. RP00-585-000. Northern Indiana and Michigan Consolidated Gas Company also filed an intervention in Docket No. CP98-134-004 et al., BTU Watch Inc., filed an intervention in Docket No. RP00-586-000.

APPENDIX

Vector Pipeline L.P.
Docket Nos. CP98-133-005, CP98-134-005, CP98-135-005

FERC Gas Tariff
Original Volume No. 1

To Become Effective December 1, 2000

Original Sheet No. 1
Original Sheet No. 2
Original Sheet No. 3
Original Sheet No. 10
Original Sheet No. 10A
Original Sheet No. 10B
Original Sheet No. 11
Original Sheet No. 20
Original Sheet No. 21
Original Sheet No. 22
Original Sheet No. 30
Original Sheet No. 31
Original Sheet No. 32
Original Sheet No. 33
Original Sheet No. 34
Original Sheet No. 35
Original Sheet No. 40
Original Sheet No. 41
Original Sheet No. 42
Original Sheet No. 43
Original Sheet No. 100
Original Sheet No. 101
Original Sheet No. 102
Original Sheet No. 103
Original Sheet No. 110
Original Sheet No. 111
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Original Sheet No. 152
Original Sheet No. 153
Original Sheet No. 154
Original Sheet No. 154A
Original Sheet No. 155
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Vector Pipeline L.P.
Docket No. RP00-586-000

FERC Gas Tariff
Original Volume No. 1

To Become Effective December 1, 2000

First Revised Sheet No. 1
First Revised Sheet No. 21
Original Sheet No. 43
Original Sheet No. 44
Original Sheet No. 45
Original Sheet No. 46
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Original Sheet No. 48
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Original Sheet No. 52
Original Sheet No. 53
Original Sheet No. 54
Original Sheet No. 55
First Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 106
First Revised Sheet No. 107
First Revised Sheet No. 109
First Revised Sheet No. 118
First Revised Sheet No. 119
First Revised Sheet No. 120
First Revised Sheet No. 121
First Revised Sheet No. 122
First Revised Sheet No. 136
First Revised Sheet No. 154
Original Sheet No. 215
Original Sheet No. 216
Original Sheet No. 217
Original Sheet No. 218
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APPENDIX G

93 FERC ¶ 61,294

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

San Diego Gas & Electric Company
Complainant,

v.

Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange	Docket Nos. EL00-95-000 EL00-95-002 EL00-95-003

Respondents.

Investigation of Practices of the California Independent System Operator and the California Power Exchange	Docket Nos. EL00-98-000 EL00-98-002 EL00-98-003

Public Meeting in San Diego, California	Docket No. EL00-107-000
Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C. Complainants, v.	
California Independent System Operator Corporation Respondent.	Docket No. EL00-104-000
California Electricity Oversight Board Complainant, v.	
All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	Docket No. EL00-104-000

California Municipal Utilities Association,

Complainant,

v.

All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange,

Docket No. EL01-1-000

Respondents.

Californians for Renewable Energy, Inc. (CARE)

Complainant,

v.

Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation

Docket No. EL01-2-000

Respondents.

Puget Sound Energy, Inc.

Complainant,

v.

All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement,

Respondents.

Docket No. EL01-10-000

ORDER DIRECTING REMEDIES FOR CALIFORNIA WHOLESALE ELECTRIC MARKETS

(Issued December 15, 2000)

Introduction and Summary

On November 1, 2000, the Commission issued in the above dockets an order proposing specific remedies to address dysfunctions in California's wholesale bulk power markets and to ensure just and reasonable wholesale power rates by public utility sellers in California. The electric power situation in California has worsened since our November 1 order was issued and it is critical that both we and California State regulators take immediate steps within our respective jurisdictions to correct the situation. Today, in the interest of protecting consumers, ensuring creditworthiness of market participants, and moving the Western markets toward the kind of rules that will sustain the electric industry in the long run, we adopt and direct specific remedies within our authority under

the Federal Power Act. These remedies are designed to help alleviate the extreme high prices being borne by Californians, but also to ensure that sellers continue to have incentives to sell into California and sufficient incentives to build sorely needed new generation and transmission necessary to provide reliable service in the future. However, as discussed further herein, the problems facing consumers in California cannot be alleviated unless the State also takes immediate steps to remove restrictions, identified below, that it has imposed on the three investor-owned suppliers in California and to permit needed infrastructure.

Beginning in 1996, this Commission issued a series of orders which, at the urging of California State regulators, deferred to the State on all significant aspects of State restructuring of California electric power markets and market rules – including those aspects which directly implicated this Commission's exclusive jurisdiction. In today's order, we find it necessary to fundamentally change some of the wholesale market rules that arose from the original State restructuring and were accepted by us. Unless we take this step, and unless the State also expeditiously takes the step of changing its market restrictions and dealing with other relevant matters within its jurisdiction, wholesale markets will continue to be dysfunctional and electric consumers will continue to be at risk of unnecessary price volatility and power interruptions. Simply put, we must not only stop the current electric market hemorrhaging and restore credibility to the electric markets in the West, but we must ensure that this situation does not recur.

Given the gravity of the situation and the need to expeditiously implement remedies that will avert a recurrence of the problems in California last summer as well as the problems in the past few weeks, our order today is forward-looking. This order does not address issues associated with retroactive refund and retroactive remedial authority issues. Today we concentrate on the implementation of those market reforms that are needed immediately. We emphasize that critical long-term reforms such as siting and demand response also must be addressed immediately by relevant State authorities.

The Commission herein adopts the following remedial measures:

(1) **Elimination of the Mandatory PX Buy-Sell Requirement**. The Commission is eliminating the requirement that the investor owned utilities in California (IOUs) sell all of their generation into, and buy all their generation from, the California Power Exchange (PX). This will release the entirety of the IOUs' 40,000 MWs of peak load from exposure to the spot market and will allow or require the following:

(a) ***25,000 MWs immediately returned to State regulation.*** On the date of this order, 25,000 MW of generation owned by or under contract to the IOUs, which the State had required to be sold at wholesale into the PX, may be sold directly at retail by the IOUs subject to the regulation of California. The State is free as of date of issuance of this order to regulate this power on a cost-of-service basis, subject to a cost cap, or in any way it sees fit.

(b) Release of load to bilateral markets and prudent risk management. The release of all 40,000 MWs from mandatory exposure to the spot market will permit the IOUs to move their purchase power needs to bilateral long-term contracts and adopt a balanced portfolio of contracts to mitigate cost exposure. This is critical to limiting extreme price volatility for California consumers. However, this cannot occur unless the California Commission also removes its requirement that IOUs buy only through the PX and unless it provides IOUs with some certainty with respect to contracting. It is critical that the California Commission give timely and predictable approval of the prudence of a balanced portfolio of long and short-term contracts.

(c) Termination of PX wholesale rate schedules. The Commission will terminate the PX's wholesale rate schedules which enable it to continue to operate as a mandatory power exchange. Termination will be effective as of the close of the April 30, 2001 trading day. These tariffs may be re-instituted at a later time but that depends upon the California Commission's willingness to remove its mandatory buy requirement and to develop prudence benchmarks for bilateral purchases, or other changed circumstances. We see great value in this and other power exchanges but cannot assure just and reasonable rates in the presence of a mandatory power exchange in these circumstances.

(2) **Benchmark Price for Wholesale Bilateral Contracts.** To provide guidance to the market participants and our input to the California Commission with respect to prudent contracting, we adopt a price benchmark for assessing prices of long-term electric supply contracts. We would expect to use this benchmark in assessing any complaints regarding the justness and reasonableness of pricing of such long-term contracts negotiated under current market conditions.

(3) **Penalties for Underscheduling Load. Market** participants will be required to schedule 95 percent of their loads prior to real-time and will be subject to a penalty for deviations in scheduling in excess of five percent of an entity's hourly load requirements, with disbursement of revenues to all loads that scheduled accurately.

(4) **Market Monitoring and Price Mitigation for ISO and PX Spot Markets.** The above remedies will shrink the ISO's real-time market to approximately 5 percent of load. In other words, only about 2,000 MWs (instead of 6,000 MWs) will be purchased in the real-time, sometimes volatile, markets. However, to ensure that prices in the ISO and PX spot markets are just and reasonable, the Commission will provide appropriate market monitoring and price mitigation:

(a)"Real-Time" Mitigation. The Commission directs a technical conference for purposes of developing a comprehensive and systematic monitoring and mitigation program which

incorporates appropriate thresholds and screens and specific mitigation measures if those thresholds and screens are breached. A proposed plan is to be submitted to the Commission no later than March 1, 2001 so that an acceptable plan can be reviewed by the Commission and in place by May 1, 2001.

(b) $150 Breakpoint for Interim Period. The Commission will establish a $150 per MW breakpoint which will be used for the interim period before "real time" mitigation is implemented.

- Sellers bidding at or below this breakpoint will receive the market clearing prices, but not more than $150 per MW.
- If sellers bidding above this breakpoint are needed to clear the market, they will receive their actual bids. However, they will be subject to certain reporting and monitoring requirements to ensure that market power is not exercised and to ensure that rates remain just and reasonable. Certain refund conditions will continue to apply; however, unless the Commission issues written notification to a seller that its transaction is still under review, refund potential on a transaction will close after 60 days.

(5) Independent Governing Board of ISO. The current ISO stakeholder governing board must be replaced with a non-stakeholder board, with members to be independent of market participants. In the interim, the ISO Governing Board members, on January 29, 2001, are

required to turn over decision-making power and operating control to the management of the ISO; however, they will be permitted to continue functioning as an advisory committee that provides input to ISO management until such time as a new Board is seated or until April 27, 2001, whichever occurs sooner. We note that under the Commission's Order No. 2000 rule on regional transmission organizations (RTOs), the California ISO's RTO filing pursuant to the rule must address the independence criterion contained in the rule.

(a) State-Federal Discussions on Board Selection. In a later order, the Commission will establish procedures to discuss with state representatives the process for selection of ISO Board members.

(6) Generation Interconnection Procedures For ISO and IOUs. We require both the ISO and the three California IOUs to file generation interconnection procedures.

Background

A. August 23 Order

On August 2, 2000, in response to significant increases in prices for energy and ancillary services in California, SDG&E filed a complaint in Docket No. EL00-95-000. This complaint, filed against all sellers of energy and ancillary services into the ISO and PX markets subject to the Commission's jurisdiction, requested that the Commission impose a $250 price cap for sales into those markets. The Commission denied this request in an order issued

August 23, 2000, on the grounds that SDG&E had not provided sufficient evidence to support an immediate seller's price cap.[1] However, in that order, the Commission instituted formal hearing proceedings under section 206 of the Federal Power Act to investigate the justness and reasonableness of the rates of public utility sellers into the ISO and PX markets, and also to investigate whether the tariffs, contracts, institutional structures and bylaws of the ISO and PX were adversely affecting the wholesale power markets in California. The Commission held the hearing in abeyance pending the completion of a separate staff fact-finding investigation of the conditions of bulk power markets that was to be completed no later than November 1, 2000.

In addition, the Commission discussed the role of refunds in the proceeding, and noted that refunds were discretionary and may not be the appropriate remedy to address competitive problems that may be identified. The order further stated that any decision whether to direct refunds would be based on findings regarding just and reasonable rates and a balancing of consumer and investor interests. The Commission established a refund effective date of 60 days after publication of notice of the Commission's intent to institute a proceeding in the Federal Register.[2]

B. Staff Report

Staff completed its fact-finding investigation of California markets in October, and submitted its

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[1] *San Diego Gas & Electric Company, et al.*, 92 F.E.R.C. ¶ 61,172 at 61,606 (2000) (August 23 Order).

[2] *Id.* at 61,608.

report to the Commission. [3] The Staff Report identified three factors that contributed to high electricity prices. First, market forces in the form of significantly increased power production costs combined with increased demand due to unusually high temperatures and a scarcity of available generation resources throughout the West and California in particular played a major role. Second, existing market rules exacerbated the situation by exposing the three investor-owned utilities (IOUs) to the volatility of the spot market without affording them the ability to mitigate the price volatility and by promoting underscheduling in the PX, thereby increasing the amount of demand and supply that appeared in the ISO's real-time market. Third, the Staff Report noted evidence suggesting that sellers had the potential to exercise market power, although there were insufficient data to make determinations about the exercise of market power by individual sellers.[4]

C. November 1 Order

The Commission issued an order on November 1, 2000 proposing measures to remedy the problems identified in the Staff Report. [5] The Commission

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[3] Staff Report to the Federal Energy Regulatory Commission on Western Markets and the Causes of the Summer 2000 Price Abnormalities–Part 1, November 1, 2000 (Staff Report).

[4] The Staff Report indicated some attempted exercise of market power, if the standard of bidding above marginal cost is used. Staff Report at 1 - 4. The November 1 Order did not establish any standard for determining market power.

[5] San Diego Gas & Electric Company, *et al.*, 93 F.E.R.C. ¶ 61,121 (2000), *reh'g pending* (November 1 Order).

found that the "electric market structure and market rules for wholesale sales of electric energy in California were seriously flawed and that these structures and rules, in conjunction with an imbalance of supply and demand in California, have caused, and continue to have the potential to cause, unjust and unreasonable rates for short-term energy . . . under certain conditions." [6] The order noted that "While this record does not support findings of specific exercises of market power, and while we are not able to reach definite conclusions about the actions of individual sellers, there is clear evidence that the California market structure and rules provide the opportunity for sellers to exercise market power when supply is tight, and can result in unjust and unreasonable rates under the FPA."[7]

To deal with these flaws, the November 1 Order proposed remedies intended to reduce over-reliance on spot markets in California, and attempted "to balance, on the one hand, holding overall rates to levels that approximate competitive market levels for the benefit of consumers, with, on the other hand, inducing sufficient investment in capacity to ensure adequate service for the benefit of consumers."[8] The order proposed, effective 60 days after the date of the order, (1) to eliminate the requirement that the investor-owned utilities (IOUs) must buy and sell power through the PX, (2) to require market participants to schedule 95 percent of their transactions in the Day-Ahead markets or be

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[6] *Id.* at 61,349-50.

[7] *Id.* at 61,350.

[8] *Id.*

subjected to a penalty charge; (3) to replace the existing PX and ISO stakeholder boards with independent non-stakeholder boards; and (4) to require the filing of generation interconnection procedures.

The order also identified longer-term structural reforms that must be addressed, including: (1) consideration of market rules to ensure meeting reserve requirements; (2) exploration of alternatives to the single price auction format; (3) elimination of the requirement for balanced schedules; (4) improved market monitoring and market mitigation strategies; (5) submission of a congestion management redesign proposal; and (6) consideration of demand bidding programs for the ISO and Scheduling Coordinators. In addition, the order urged state officials to take certain actions within their exclusive jurisdiction, including accelerating siting of needed generation and transmission capacity, developing additional demand-side response programs at the retail level, and eliminating impediments to forward contracting.

Also, to ensure fair prices while various market reforms were being put in place, the order proposed additional temporary measures to mitigate prices, including modification of the single price auction so that bids above $150MWh could not set the market clearing price that is paid to all bidders and imposing certain reporting and monitoring requirements for transactions and bids above the $150MWh breakpoint, as well as retaining a refund obligation for sales into the ISO and PX markets for the period October 2000 through December 2002.

The November 1 Order changed the refund effective date contemplated in the August 23 Order from 60 days after publication of notice in the Federal Register, October 29, 2000, to 60 days after the date of SDG&E's complaint, October 2, 2000, effectively granting the requests for rehearing from SoCal Edison and PG&E on this issue. The order also contains extensive discussion of the Commission's authority to direct refunds, for the periods both before and after the refund effective date, as discussed below.

The Commission explained why a paper hearing is adequate to resolve the matters before it, and established a period through November 22, 2000 for the submission of comments and supporting evidence. In addition, the Commission announced its intent to convene a public conference on November 9, 2000 and to issue a final order adopting and directing remedies for California's markets before the end of the calendar year. Finally, the Commission rejected proposed tariff amendments filed by the PX and the ISO requesting or extending price caps for their markets.

D. Related Complaints and Other Filings

1. Joint Complaint in Docket No. EL00-97-000

On August 3, 2000, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C. (Joint Complainants) jointly filed a complaint and request for fast-track processing pursuant to Rule 206 of the

Commission's Rules of Practice and Procedure [9] requesting the Commission to find that the ISO must compensate participating generators, Scheduling Coordinators, or other sellers (collectively, Market Participants) for their actual damages and lost opportunity costs in the event that the ISO curtails energy exports scheduled by a Market Participant. Joint Complainants further request that the Commission find that any effort by the ISO to limit payment for curtailed energy exports to ISO-capped prices would violate the Commission's order in *Morgan Stanley Capital Group Inc.*, 92 FERC ¶ 61,112 (2000) (*Morgan Stanley*).

In support of the complaint, Joint Complainants observe that under section 5.6.1 of the ISO Tariff, the ISO may curtail firm exports during a Stage Three emergency. Joint Complainants state that this tariff language was designed to accommodate situations like transmission constraints or unexpected problems with the grid that, among other things, could prohibit power from being shipped out of the state to avoid transmission overloads, voltage problems, or stability problems. Joint Complainants assert, however, that system emergencies will likely also be triggered by supply shortages that are a direct result of the ISO's new, lower price caps. In effect, Joint Complainants argue, the ISO is risking the creation of system emergencies by its own decision to lower price caps below market price, thus driving Market

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[9] 18 C.F.R. § 385.206 (2000).

Participants to seek other markets and resulting in shortages in the ISO control area.

Furthermore, Joint Complainants contend that the ISO Tariff does not specify how Market Participants are to be compensated if their energy exports are curtailed by the ISO in response to an ISO-declared system emergency. Joint Complainants state that under standard arrangement for export transactions for firm delivery, Market Participants could be liable to the would-be buyer for liquidated damages for failure to deliver. Joint Complainants also state that in addition to liquidated damages, if export schedules are curtailed, Market Participants will lose the opportunity to sell the exported energy at competitive market prices. Therefore, Joint Complainants contend, if the ISO terminates an export transaction, the ISO should be made to hold the generator harmless from any damages that result from the ISO's decision and to provide the generator full recovery of its opportunity cost on the canceled export sale.

Notice of Joint Complainants' filing was published in the Federal Register, 65 Fed. Reg. 48,982 (2000), with comments, protests, and motions to intervene due on or before August 14, 2000. The California Commission filed a notice of intervention, protest, and request for summary disposition asserting that the complaint is factually unsupported, legally unfounded, complains of conduct consistent with the ISO's authority under pertinent Commission decisions, and seeks to avoid the ISO's Commission-authorized price cap in order that Joint Complainants may exercise market power and impose unjust and unreasonable rates. Timely

motions to intervene, comments, protests, and answers were filed by the entities listed in Appendix A. In addition, El Paso Merchant Energy, L.P., filed an untimely motion to intervene.

Three intervenors as well as a number of individuals oppose the complaint, asserting, among other things, that the complaint is factually unsupported and legally inaccurate. Six intervenors filed comments supporting the complaint in its entirety. The Oversight Board expresses a number of concerns regarding the complaint but agrees that a seller's compensation for bona fide sales[10] should not be limited by the ISO's bid cap if such a sale were for an amount higher than the bid cap currently in place. PG&E incorporates by reference its comments in the consolidated hearing proceeding and requests consolidation of the instant complaint therein.

On August 14, 2000, the ISO filed an answer to the complaint. On August 18, 2000, Joint Complainants filed a motion to reply to certain answers to the complaint.

2. California Oversight Board's Complaint in Docket No. EL00-104-000

On August 29, 2000, the Oversight Board filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure asking the Commission to find that the wholesale markets in California are not workably competitive and to take such actions as are necessary to ensure that

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[10] *I.e.*, sales which are not those the Oversight Board believes to be imprudent or infeasible. See Oversight Board at 3-4.

wholesale prices for energy and ancillary services are just and reasonable. In addition, the Oversight Board requests that the Commission affirmatively direct the ISO to maintain bid caps at a level no greater than $250 per MWh for energy, $250 per MW for ancillary services, and $100 per MW for Replacement Reserves. Finally, the Oversight Board requests that its complaint be consolidated with the consolidated hearing proceeding.

The Oversight Board explains that its complaint is based on its conclusion that respondent Sellers[11] and Scheduling Coordinators, [12] individually and collectively, have market power and exercise market power commanding prices far above rates that would be determined by cost-of-service ratemaking or prices voluntarily agreed to by buyers and sellers in a workably competitive market. According to the Oversight Board, such pricing occurs with regularity

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[11] The Oversight Board indicates that the term "Sellers" includes all entities with market-based rate authority for sales in California as well as non-Commission jurisdictional sellers, including but not limited to, power marketers, traditional investor-owned utilities, new generation owners, Federal power administrations, publicly-owned utilities (including agencies of the State of California and agencies of other states), local agencies (both in-state and out-of-state), and sellers located beyond the borders of California. Complaint at 3, n.5.

[12] The Oversight Board believes that Scheduling Coordinators are well-positioned to take advantage of gaming opportunities in the ISO and the PX markets because they often bid on behalf of more than one seller. The Oversight Board asserts that the benefits of divestiture - reducing concentration of ownership - can be undermined if a single Scheduling Coordinator is able to bid on behalf of multiple suppliers. Complaint at 3, n.6.

during periods of high demand;[13] at some times, respondent Sellers and Scheduling Coordinators know with substantial certainty that the ISO will be accepting all bids regardless of their level, while at other times a number of those entities know that they control enough capacity in relation to the system demand and supply margin that they have a high likelihood of successfully setting the market clearing price. Thus, the Oversight Board asserts, under both sets of circumstances, resulting prices cease to bear any relationship to the cost of supplying the service and instead reflect bids made with the knowledge that supply will have to be taken regardless of the price at which it is offered.

Further, the Oversight Board asserts that because Sellers and Scheduling Coordinators know with practical certainty that they will be needed during periods of high demand, they have diminished incentive to offer service in the forward markets (*e.g.*, the PX) at a price lower than what they could expect to secure if they waited for later ISO markets.[14] As a result, the Oversight Board requests that the Commission recognize that the ISO's bid cap is a necessary - and not merely allowable - damage mitigation measure until the Commission finds affirmatively that California market prices are just and reasonable. The Oversight Board also requests that the Commission

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[13] The Oversight Board contends that the threshold level for such demand is 33,000 MW or higher. Complaint at 5.

[14] In support of its assertion, the Oversight Board cites several instances during May and June 2000 where both the PX's and the ISO's market prices were markedly elevated during the same time-periods.

exercise its responsibilities under sections 205 and 206 of the Federal Power Act by directing the ISO to maintain a cap of not more than $250 for bids into the ISO's energy and ancillary services markets, and not more than $100 for bids into the ISO's Replacement Reserves markets (which, the Oversight Board notes, are the ISO's currently-effective bid caps).[15]

Notice of the Oversight Board's filing was published in the Federal Register, 65 Fed. Reg. 54,248 (2000), with comments, protests, and motions to intervene due on or before September 18, 2000. The California Commission filed a notice of intervention supporting the Oversight Board's request that the Commission find that California's markets are not workably competitive and asking that the Commission take such action as necessary to ensure that California's wholesale rates are just and reasonable. Timely motions to intervene, comments, protests, and answers were filed by the entities listed in Appendix A.

Fifteen intervenors filed comments opposing the Oversight Board complaint, arguing that the Oversight Board failed to adequately justify its request and that price caps are counterproductive

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[15] The Oversight Board asserts that a cap of $250 in the ISO's markets is sufficient to allow generators to recover their variable costs and earn significant additional revenues. In support of its assertion, the Oversight Board refers to the complaint filed by SDG&E on August 2, 2000, in Docket No. EL00-95-000, whereby SDG&E contended that hourly operating costs for an inefficient gas-fired California generating unit would be $147 per MWh (based on then-current natural gas prices). Complaint at 8.

and harmful to a competitive market. Four intervenors filed comments in support of the complaint, including support for the request for consolidation. Motions to dismiss in part for lack of jurisdiction were filed by Cities/M-S-R, Modesto, and TANC. NCPA filed an answer and motion to dismiss as to non-jurisdictional entities.

On October 3, 2000, the Oversight Board filed an answer in response to various motions to dismiss the complaint. On October 18, 2000, Pinnacle filed an answer in response to the answer of the Oversight Board.

3. California Municipal Utilities Association's Complaint in Docket No. EL01-1-000

On October 6, 2000, CMUA filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure requesting that the Commission impose cost-based rates on all Commission-jurisdictional sellers into the ISO and the PX and that the Commission consolidate the complaint with the consolidated hearing proceeding. In support of its complaint, CMUA argues that California consumers are experiencing unprecedented, high, sustained wholesale power prices. Further, CMUA also argues that the California market is not workably competitive and that the framework to correct the problems therein is not in place.

In sum, CMUA contends that although the ISO is considering congestion management and other reforms to improve market performance, such modifications will not solve California's market problems. According to CMUA, the reality is that the

infrastructure necessary for workable competition, including investment in generation and transmission facilities and real-time demand responsiveness, will not be in place any time soon. CMUA acknowledges that many of the market rule modifications may help lower overall costs to consumers as compared to current prices; however, CMUA asserts those changes will not improve the fundamentals of the market. Thus, CMUA concludes, the only available remedy is the reinstatement of cost-of-service ratemaking for jurisdictional sellers until such time as fundamental changes can be made and markets can be found to be workably competitive.

Notice of CMUA's filing was published in the Federal Register, 65 Fed. Reg. 61,315 (2000), with comments, protests, and motions to intervene due on or before October 26, 2000. The California Commission filed a notice of intervention raising no issues. Timely motions to intervene, comments, protests, and answers were filed by the entities listed in Appendix A. In addition, an untimely motion to intervene was filed by the City of Vernon, and an untimely joint motion to intervene was filed by Dynegy, et al.

Thirteen intervenors filed comments opposing CMUA's complaint, asserting that CMUA failed to adequately support its position on that matter, that cost-based rates would inhibit the formation of a competitive market within California, and that the complaint is premature in light of the consolidated hearing proceeding. Four intervenors filed comments supporting the complaint, contending, among other things, that cost-based rates are a superior alternative to price caps. PG&E and SoCal Edison

each filed motions to intervene and comments arguing that the Commission should adopt the market mitigation measures previously outlined in their Joint Motion for Emergency Relief. [16] One individual, Mr. Bruce W. Simonton, filed comments urging the Commission to consider the adverse impact that unregulated generation plant downtime will have on cost-based rate determinations.

4. CAlifornians for Renewable Energy, Inc.'s Complaint in Docket No. EL01-2-000

On October 26, 2000, as amended on October 31, 2000, CAlifornians for Renewable Energy, Inc. (CARE) filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure petitioning the Commission to: (1) rectify unjust and unreasonable prices stemming from the wholesale markets for energy and ancillary services operated by the ISO and the PX; (2) find that the wholesale markets in California are not workably competitive; (3) make findings that the events and circumstances surrounding the June 14, 2000 rolling outage in the San Francisco Bay Area warrant investigations by the United States Department of Justice (DOJ) of anti- trust activities in restraint of trade and of alleged civil rights violations rendered by various entities; [17] and (4) include in the aforementioned investigations the identification of injury, loss of life,

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[16] *See* the October 16, 2000 Joint Motion for Emergency Relief and Further Proceeding filed in Docket No. EL00-95-000, et al., by PG&E, SoCal Edison, and TURN.

[17] Those entities are: IEP; all sellers of energy and ancillary services into markets operated by the ISO and the PX; all Scheduling Coordinators acting on behalf of the aforementioned sellers; the ISO; and the PX.

disability, or hospitalization associated with the June 14, 2000 rolling outage. CARE also requests that the Commission consolidate the complaint with the consolidated hearing proceeding.

In support of its complaint, CARE contends that various entities are currently involved together in an ISO/generator trust to drive up the price of electricity and to justify expedited power plant construction in California to further maximize generator profits. Further, CARE also contends that low-income and minority communities were disparately impacted by the June 14, 2000 rolling blackouts in the San Francisco Bay Area. Finally, CARE argues that the June 14, 2000 rolling blackouts created an eminent threat to public health and safety, and overburdened Northern California emergency services, hospitals, and law enforcement with unanticipated costs to public and private funds.

Notice of CARE's amended complaint was published in the Federal Register, 65 Fed. Reg. 70,340 (2000), with comments, protests, and motions to intervene due on or before November 30, 2000. The California Commission filed a notice of intervention raising no issues. Timely motions to intervene, comments, protests, and answers were filed by the entities listed in Appendix A.

Twelve intervenors filed comments opposing CARE's complaint in its entirety, contending that CARE failed to adequately support its claims, that the complaint is premature in light of the consolidated hearing proceeding, and that CARE's petition for DOJ investigations is beyond the scope of the Commission's jurisdiction. SMUD filed

comments opposing the majority of CARE's complaint but agreeing that the wholesale markets in California should be found to be not workably competitive. IEP filed a conditional answer and motion to dismiss arguing the complaint should be dismissed in its entirety or, in the alternative, that the Commission should (1) dismiss the complaint as to IEP (a non-Commission-jurisdictional industry trade group) and (2) consolidate the complaint with the consolidated hearing proceeding. SoCal Edison filed comments arguing that the Commission should adopt the market mitigation measures previously outlined in the Joint Motion for Emergency Relief discussed above. Motions to dismiss in part for lack of jurisdiction were filed by Cities/M-S-R, Modesto, and TANC. NCPA filed an answer and motion to dismiss as to non-jurisdictional entities.

5. Puget Sound Energy, Inc.'s Complaint in Docket No. EL01-10-000

On October 26, 2000, Puget Sound filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure petitioning the Commission for an order capping the prices at which sellers subject to Commission jurisdiction, including sellers of energy and capacity under the Western Systems Power Pool Agreement, may sell energy or capacity in the Pacific Northwest's [18] wholesale power markets. Specifically, Puget Sound seeks an order that prospectively caps the prices for wholesale

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[18] Puget Sound indicates that, as used in its complaint, the term "Pacific Northwest" has the meaning set forth in the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839a(14) (2000).

sales of energy or capacity into the Pacific Northwest at a level equal to the lowest cap on prices established, ordered, or permitted by the Commission for wholesale purchases in, or wholesale sales of energy or capacity to or through the markets operated by the ISO or the PX.

Puget Sound asserts that price caps of the kind requested for sales to the ISO and the PX and those instituted by the ISO for purchases are - absent equivalent price caps on wholesale sales of energy and capacity into the Pacific Northwest - fundamentally unfair to Pacific Northwest public utilities and are antithetical to the development of a fair competitive wholesale power market within the Western Interconnection. In support of its assertion, Puget Sound argues that uneven application of price caps upsets the balance of purchase and sale market prices between California and the Pacific Northwest and violates section 206 of the FPA because such uneven application is unjust, unreasonable, and unduly discriminatory or preferential. Further, according to Puget Sound, the effect of such disparate treatment is to expose wholesale purchasers in the Pacific Northwest to uncapped prices when they need power (*e.g.*, to meet winter demand) and yet restrict their ability to offset the costs of such purchases with uncapped prices when they have surplus power (*e.g.*, due to favorable hydroelectric generation conditions) for sale to California. Thus, Puget Sound concludes, fairness and the desire to avoid unnecessary market distortions within the integrated California and Pacific Northwest market dictate that the Commission institute Puget's requested price cap.

Notice of Puget's filing was published in the Federal Register, 65 Fed. Reg. 66,896 (2000), with comments, protests, and motions to intervene due on or before November 16, 2000.[19] Timely motions to intervene, comments, protests, and answers were filed by the entities listed in Appendix A. In addition, untimely motions to intervene were filed by the Oversight Board, El Paso Merchant Energy, LP, Bonneville Power Administration (Bonneville), and Western Area Power Administration (WAPA).

Six intervenors filed comments opposing Puget's complaint, arguing that Puget Sound failed to adequately support its assertions, that the complaint is unnecessary in light of the consolidated hearing proceeding, that the Northwest has no organized electricity market to which a price cap may be rationally applied, and that price caps in the Northwest would inhibit the formation of a competitive market within that region. SoCal Edison filed comments supporting the complaint, contending that price caps throughout the entire Western region will alleviate incentives for suppliers to move their supply outside the PX (*e.g.*, the ISO or outside of California) for the purpose of receiving higher prices in other markets. PacifiCorp filed a motion for clarification, for more definition, and for a stay, asserting that Puget Sound should be required to provide a much greater level of specificity in its

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[19] We note that several intervenors filed pleadings in the instant docket on November 17, 2000. However, insofar as the Commission closed its docket operations at 1:00 p.m. on November 16, 2000, and the deadline of November 16 is not mandated by statute, we hereby accept those pleadings as timely filed.

complaint and that the complaint should be stayed pending the outcome of the consolidated hearing proceeding.

On November 30, 2000, Puget Sound filed an answer to PacifiCorp's motion for clarification, for more definition, and for a stay.

6. ISO's Offer of Settlement in Docket Nos. EL00-95-003 and EL00-98-003

On October 20, 2000, the ISO submitted a proposed Offer of Settlement which, according to the ISO, is intended to address a core issue in the pending proceeding – *i.e.*, the need to have in place as soon as practicable a system-wide market power mitigation regime. The ISO indicates that the Offer of Settlement is not intended to displace the congestion management and market redesign efforts that are nearing completion.[20] Rather, the ISO states that the Offer of Settlement is complementary to those initiatives and addressed to issues which cannot be ignored in the interim and that are likely to persist even with market reformation, for they are attributable not to design inadequacies but to infrastructure insufficiency.

In sum, the ISO proposes that a price cap be established at $100MWh with the following exemptions:[21] (1) if an owner demonstrates that a

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[20] *See* November 1 Order, 92 F.E.R.C. at 61,356.

[21] The ISO states that a price cap of $100/MWh was selected because the analysis undertaken by the ISO's Department of Market Analysis indicated that during times when the market is workably competitive, it clears at prices below $100/MWh. Further, the ISO proposes to index the price cap to an assumed monthly average burnertip price of natural

payment of $100/MWh would be insufficient to cover the variable operating cost of a unit and make some reasonable contribution to fixed cost recovery, a higher cap would be fixed for that unit but that price would not establish the market clearing price; (2) generation fired by renewables would not be capped; (3) owners and operators whose units do not exceed 50 MW would be exempt; (4) incremental generation (*i.e.*, additions to existing units and new units) would be exempt; (5) any owner or marketer who demonstrates that it has committed 70 percent or more of the availability of its in-state portfolio to an in-state load-serving entity for a term extending at least through October 15, 2002, would be exempt; and (6) imports would be exempt. Exempt units would be subject to whatever higher damage-control price cap is in place.

Moreover, as a corollary measure, the ISO proposes that load be required to forward contract for no less than 85 percent of projected requirements, as adjusted by season and time-of-day. Generation currently owned by load-serving entities would be counted in satisfaction of the 85 percent requirement. Finally, Scheduling Coordinators would be required to schedule no less than 90 percent of load in the day-ahead market and no less than 95 percent in the hour-ahead market. A charge would be assessed against load and generation that appears in real-time and that exceeds 1.10 and 1.05 times the balanced schedules submitted,

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gas at $7/MMBtu. To the extent that the price of natural gas deviates by more than a threshold level - *e.g.*, 5 percent - the ISO indicates that its intention would be to adjust the price cap to reflect that cost change.

respectively, in the day-ahead and hour-ahead markets, and out-of-market costs would be charged to underscheduled load and to generation appearing in real-time in excess of balanced schedules.

With respect to its proposed price cap, the ISO indicates its belief that the combined effect of a $100/MWh price cap with the availability of an exemption from that limitation will incline those that own or control generation resources to forward contract. Further, the ISO asserts that, by requiring forward contracting to the extent proposed, UDCs, with the concurrence of the California Commission, should be in a position to secure for their customers with the most inelastic loads – *i.e.*, residential and small commercial customers – adequate supplies at fixed rates.

The PX filed comments indicating concern that the Offer of Settlement is unclear in some respects and incomplete in others, that it addresses only some of the market corrections that need to be considered, and that other potential approaches be given equal consideration during any settlement process. PG&E filed comments complaining that the Offer of Settlement fails to address remedies for the market dysfunction over the past Summer and fails to provide any proposals for preventing the repeat of that dysfunction.

7. ISO's Tariff Amendment No. 30 in Docket Nos. EL00-95-002 and EL00-98-002

In the August 23 Order, the Commission noted that the ISO procures on a daily basis only the resources necessary for the operating day, and we expressed concern that this practice not only puts

pressure on the grid operator to secure needed resources at the last minute but also is uneconomical. Consequently, we directed the ISO to immediately institute a more forward approach to procuring the resources necessary to reliably operate the grid.[22]

On September 11, 2000, in response to our above direction, the ISO filed Tariff Amendment No. 30.[23] The ISO proposes to amend section 2.5.3.1.5 of the tariff to clarify the ISO's authority to contract without first soliciting bids. The ISO indicates its belief that while the current tariff provision does not specify, as a precondition for contracting, that a competitive solicitation must be conducted, clarification of any ambiguity is appropriate. Further, the ISO asserts that apart from the fact that a formal bid process would be inconsistent with the time imperatives, particularly if it is possible to obtain relief for the remaining weeks of the peak season, individual negotiation is likely to produce better results for consumers.

In addition, the ISO proposes to amend section 2.3.5.1.8 of the ISO Tariff and to add a new section 2.3.5.1.9 for the purpose of allocating the costs of any forward contracts to those Scheduling Coordinators who are responsible for the incurrence of such costs, *i.e.*, to those who deviate, in real-time, from

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[22] August 23 Order, 92 F.E.R.C. at 61,608.

[23] The ISO requests waiver of the Commission's 60-day notice requirement and immediate acceptance of its proposed tariff amendment (*i.e.*, an effective date coincident with the date of the tariff amendment's filing). We note that the 60-day notice requirement does not apply to compliance filings such as this.

schedules, in proportion to their deviation. According to the ISO, fairness, as well as providing appropriate economic incentives to Scheduling Coordinators to align their forward and real-time schedules, dictates this allocation. In addition, the ISO indicates that to the extent that such allocation is not sufficient to make the ISO whole for the costs it incurs, any remaining balance will be incrementally flowed through the Tariff's neutrality clause (*i.e.*, section 11.2.9) as charges incurred for the benefit of all market participants.

Notice of the ISO's filing was published in the Federal Register, 65 Fed. Reg. 56,881 (2000), with motions to intervene and protests due on or before October 2, 2000. The California Commission filed a motion to intervene raising no issues.

Fifteen intervenors filed comments opposing the ISO's proposal, contending that the Commission should expressly limit the ISO's use of forward contracting and arguing that the ISO's proposed cost allocation methodology is unjust and unreasonable. Additionally, Southern Cities filed a limited protest regarding only the ISO's proposed cost allocation methodology. Comments generally supporting the ISO's proposal were filed by APX; however, APX also raises concerns regarding limitation of the ISO's use of forward contracting.

On October 18, 2000, the ISO filed an answer to the various motions to intervene, comments, and protests.

8. California Commission's Motion to Compel

On November 6, 2000, the California Commission filed a motion for adoption of a protective order and

to compel production of documents (Motion). The California Commission explains that it needs this Commission's assistance to obtain the information in question[24] from certain generators and marketers (Suppliers) both for purposes of providing comments in this proceeding and for purposes of the California Commission's own investigation into the same matters. The California Commission further requests that the Commission adopt a proposed protective order. The California Commission explains that its proposed protective order is derived from the Commission ALJs' Model Protective Order, with modifications to permit the sharing of "Protected Materials" for use in related state proceedings, and to limit disclosure of certain information to "government eyes only."

The following entities filed answers opposing the California Commission's Motion: Duke; Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (jointly); Williams; Dynegy, et al.; and Southern Energy, Inc., on behalf of itself and all of its subsidiaries and affiliates which are parties to or intervenors in this proceeding. Primary objections to the Motion include: (1) discovery has not been authorized in this proceeding, and FERC precedent

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[24] The categories of information sought by the California Commission include: (1) profit and loss statements and unconsolidated income statements; (2) documents showing respondents' transaction-specific trades of energy occurring outside the PX and ISO markets, within California or the Western System Coordinating Council; (3) documents showing respondents' variable operating costs and fixed costs; and (4) documents showing respondents' maintenance and outage schedules. Motion at 10. The California Commission generally seeks this information for the period commencing April 1, 1998.

does not allow discovery in paper hearings generally; (2) discovery is not needed because FERC already fully investigated the functioning of California's markets, and Suppliers have already produced ample information to FERC staff; (3) allowing discovery for only one party is discriminatory; (4) the subpoenas are objectionable as they are overly broad, unduly burdensome, duplicative, and/or irrelevant; and (5) the proposed protective order does not adequately restrict access to, and use of, the requested information.

In addition, SoCal Edison responded in support of the Motion, and Northern California Municipals[25] answered in support of an order compelling production of documents but objected to aspects of the proposed protective order.

9. California Governor's Comments

On December 1, 2000, Governor Gray Davis submitted his suggested changes to the November 1 Order and outlined his emerging plan to reform the California market. Governor Davis requests that the Commission reverse its November 1 Order to provide retroactive refunds. In addition, Governor Davis does not believe that the $150MWh breakpoint will provide any protection and requests that the Commission impose bid caps in the $100MW range for the next 36 months. Governor Davis's emerging plan calls for using his "green team" to develop new and creative approaches to overcoming

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[25] Northern California Municipals include the Transmission Agency of Northern California, the M-S-R Public Power Agency, Modesto Irrigation District, and the Cities of Redding, Santa Clara, and Palo Alto, California.

environmental restrictions to permit the construction and operation of new power plants. Governor Davis recognizes that forward contracts are an important tool to moderate price volatility and ensure reliability and asks the California Commission to develop benchmarks for forward contracts. Governor Davis also calls upon the California Commission to reduce barriers to locating distributed generation and cogeneration and implement programs to provide real-time price signals and demand-side management. Lastly, Governor Davis agrees with the Commission that the existing PX and ISO stakeholder boards must be replaced and he intends to propose legislation to replace the stakeholder boards with independent boards that are accountable for their actions.

E. December Orders

Beginning in mid-November, the ISO experienced numerous occasions of insufficient reserve margins and emergency conditions forcing it to serve increasingly large portions of its total Control Area load through its real-time Imbalance Energy market. On December 8, 2000, the ISO filed Tariff Amendment No. 33 in Docket No. ER01-607-000, seeking expedited consideration of tariff revisions to address emergency reliability conditions. The filing sought three modifications of the ISO's tariff: (1) immediate implementation of an interim price mitigation proposal based on the breakpoint concept that was proposed in the November 1 Order (at $250MWh) to encourage greater participation of generators in its markets; (2) provision of penalties on generators that fail to respond to dispatch instructions during a system emergency, to become

effective December 8, 2000; and (3) allocation of the costs of obtaining additional energy to Scheduling Coordinators who rely on the ISO's real-time Imbalance Energy market, as an incentive to loads to purchase energy in forward markets. The ISO requested an effective date of December 12, 2000 for the third modification.

The Commission approved the tariff revisions in an order issued December 8, 2000, with the effective dates requested by the ISO.[26]

Also on December 8, 2000, the Commission issued an order waiving certain regulations pertaining to QFs, effective for the period December 8 through December 31, 2000.[27] The waiver allows certain QFs to sell their excess production to load location in California through negotiated bilateral contracts to alleviate the inadequate generation resources in California.

Discussion

A. Procedural Matters

Numerous additional entities moved to intervene in the consolidated hearing proceeding on or before November 22, 2000. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[28] these timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. These parties are included in the list of

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[26] California Independent System Operator Corporation, 93 F.E.R.C. ¶ P61,239 (2000) (December 8 Order).

[27] San Diego Gas & Electric Co., et al., 93 F.E.R.C. ¶ 61,238 (2000).

[28] 18 C.F.R. § 385.214 (2000).

intervenors included in Appendix A. In addition, the Steel Manufacturers Association filed a motion to intervene out-of-time. In view of the early stage of the consolidated hearing proceedings and the absence of any undue prejudice or delay, we find good cause to grant this untimely, unopposed motion to intervene.

The timely, unopposed motions to intervene in the related complaint proceedings (Docket Nos. EL00-97-000, EL00-104-000, EL01-1-000, EL01-2-000, and EL01-10-000) serve to make those who filed them parties to the respective proceedings, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. In addition, those respondents filing answers or other pleadings to the complaints are parties. Intervenors and answering Respondents in each proceeding are listed in Appendix A.

Also, in view of the early stage of each proceeding and the absence of any undue prejudice or delay, we find good cause to grant the late interventions of El Paso Merchant Energy, L.P. (El Paso) in Docket No. EL00-97-000, of San Diego in Docket No. EL00-104-000, of Vernon and Dynegy, et al. in Docket No. EL01-1-000, and of the Oversight Board, El Paso, Bonneville, and WAPA in Docket No. EL01-10-000.

We will reject the ISO's answer in Docket Nos. EL00-95-002 and EL00-98-002, Joint Complainant's August 18 response in EL00-97-000, and Pinnacle West's October 18 response in Docket No. EL00-104-000, as impermissible answers under Rule 213 of the Commission's Rules of Practice and Procedure.[29]

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[29] 18 C.F.R. § 385.213(a)(2) (2000).

We do not act on the California Commission's Motion at this time.

Finally, the Commission has received numerous communications concerning this proceeding. Under Commission Rule 2201 (18 C.F.R. § 2201), "Off-the-Record Communications," written communications could be construed as prohibited, ex parte contacts if they involve the merits of the proceeding and do not comply with the Commission's filing and service requirements.

Because of the high level of public interest in this proceeding, however, and the numerous communications that the Commission has received and will likely continue to receive, the Commission will act under section 2201(e)(1)(i) of its Rules to deem any communication to the Commission from a person who is not a party as exempt under the Commission's ex parte rule. The Commission directs the Secretary to place all such documents in the public, decisional record and to list them on the docket sheet of this consolidated hearing proceeding.

B. Overview of Price Mitigation

1. The Fundamental Remedy

The comments and dialog at the November 9 conference underscored that there was much about the price mitigation proposed in our November 1 Order that was misunderstood. Many commenters are under the impression that we are relying on the $150 breakpoint and related pricing and reporting rules as the primary price mitigation tool. As we explain in this overview, our primary price mitigation is to eliminate undue reliance on the spot market so that price volatility in the spot markets

will no longer have the ability to cause the adverse economic consequences that it has to date. In this context, the $150 breakpoint serves as a supplemental price mitigation measure. In addition to this overview, each component of that price mitigation and our answer to specific objections and comments will be discussed in subsequent portions of this order.

2. Summary of November 1 Order

In our November 1 Order, we proposed price mitigation measures for sales in the PX's Day-Ahead and Day-of markets and the ISO's Ancillary Services and Real-time energy markets (herein referred to as the spot markets). In so doing, we noted that the central cause of the exposure of California to high prices can be traced directly to a mandated over reliance on these spot markets. As we stated, between 1996 and 1999, California added about 700 MW of generation while its peak load grew by some 5,500 MW. This, coupled with reduced availability of generation from out of state and little demand responsiveness to price, leaves California's spot markets vulnerable to price spikes caused by even small suppliers who, under tight supply conditions, can affect the PX and ISO market clearing prices. The result was unprecedented cost exposure for the consumers of California.

Accordingly, we proposed a three-pronged price mitigation. First, we proposed to free the IOUs from the requirement that they sell all of their generation into and purchase all of their energy requirements from the PX. Most important, this would release the IOUs from the California Commission's requirement

that nearly all of the IOUs' needs be purchased in these spot markets.

Second, we proposed that California market participants preschedule all resources and loads with the ISO and to limit their real-time energy purchases from the ISO to no more than 5 percent of their total load. We also proposed penalties on underscheduled load and removed incentives for resources to favor the real-time market . We were concerned that the real-time market can be the most volatile and that reliance on this market had reached levels which were inconsistent with proper risk management. At times, the ISO was being forced to supply a large portion of California's load at the last minute as the supplier of last resort. System operations were jeopardized as the ISO was effectively transformed from providing the imbalance services needed for reliable transmission to the supplier of last resort.

Third, we proposed to limit the use of the single price auction in these spot markets to bids at or below $150. We emphasized that, with little or no forward contracting, a significant factor causing high prices was the fact that every MW in the market is priced at the spot market clearing price. We therefore proposed that suppliers who bid above $150 be paid their as-bid costs, but not be allowed to set the clearing price. These sellers would be subject to reporting confidentially for each transaction above $150, the name of the seller, the price and amount of MWs covered by the transaction, the hour(s) covered by the transaction, and the incremental generation cost or the legitimate or verifiable opportunity costs that the seller considered in developing its bid. The

PX and ISO would be subject to monthly confidential reporting for all bids (both for public and non-public utilities) in excess of $150, to include certain market data such as bid sufficiency and unit availabilities.

3. Benefits of Self Scheduling

We reaffirm in this order the central piece of our proposed price mitigation, which is the elimination of the requirement for the IOUs to sell all of their generation into and buy all of their energy needs from the PX. This requirement caused the over reliance on spot markets, which lies at the very heart of the high prices in California. By eliminating this restriction, we will release the entirety of the IOUs' 40,000 MW of peak load from the PX. In every real sense, the IOUs will be free to mitigate their own spot price exposure by meeting their requirements (under long-term contracts in the bilateral markets). Just as significantly, the IOUs will be able to use the 25,000 MW of generation which they still own or have under contract to serve their load without having to contract with anyone.[30] This places 25,000 MW of resources directly under the jurisdiction of the California Commission. Thus, the California Commission is free to price these MWs at cost or any way it sees fit for setting retail rates. IOUs will no longer be required to bid in their own resources and buy the energy back at the market clearing price. This is a comprehensive

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[30] In response to a data request supplied by the ISO to FERC staff investigating the Summer price spikes and supported by our analysis of FERC Form No. 1 data, the IOUs own or control, under contract, approximately 25,000 MWs of resources.

measure which will mitigate the spot market exposure of most of the peak load in California.

The IOUs will need the ability to mitigate their exposure by using their considerable portfolio of owned generation to serve their load and by contracting for the supply of the rest of their load with a balanced portfolio. While we do not in this order prescribe a particular maximum level of purchases from spot markets, or short-term purchases in the bilateral markets, we strongly urge the IOUs to move their load to long-term contracts of two years or more. While there is certainly no single right answer as to what the balance between long and short-term purchases should be, the short-term and spot markets should be used to shape a portfolio, not to define it. Instructive in this regard is that other ISO markets (*e.g.* NEPOOL, NYISO, and PJM) maintain less than 20 percent in the ISO spot markets.

We cannot emphasize enough that the California Commission must act decisively and immediately to eliminate the requirement for the IOUs to buy the balance of their load from the PX.[31] This is the most serious flaw in the market design created by AB1890 and the California Commission's implementing orders. Continued delay in making this fundamental change places all other aspects of our remedial plan at risk, and prolongs the dysfunction of this market. In addition it is crucial that the California

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[31] We note that the California Commission has scheduled for its December 21, 2000 meeting consideration of a proposal to remove the requirement that the IOUs to purchase their power from the PX.

Commission move quickly to provide the IOUs with approval of their forward purchases. The specter of after-the-fact disallowance for transactions other than PX purchases has certainly chilled the decision making process and continues to subject California's ratepayers to the volatility of spot prices. California is in a state of economic emergency, and there is little chance that the IOUs will rise to the task if they are not afforded certainty.[32]

4. Functioning Forward Markets Will Be There for California

Some parties in this proceeding argue that the prices in the forward markets will be affected by last summer's spiraling spot prices and should therefore be deemed unreasonable. We do not agree. Sellers will certainly be aware that supplies of power are tight and that the IOUs are now aggressively seeking to avoid the exposure of the spot markets. Under these circumstances, as discussed below, we will be vigilant in monitoring the possible exercise of market power. However, suppliers also benefit from the stable revenue stream of forward markets and have every bit as much incentive to avoid the volatility of the spot markets as do purchasers.[33] Moreover, suppliers will bargain knowing that the

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[32] According to Governor Davis' December 1 comments, he has also asked the California Commission to develop benchmarks to provide assurance to the IOUs regarding the reasonableness of their forward contracts.

[33] While suppliers clearly benefit on the upside of price volatility, the risks of price swings move in both directions. A supplier that relies exclusively on spot markets is exposed to the risk that, due to favorable weather or supply conditions, prices will be too low to cover its costs.

spot market's size will be greatly reduced and that next summer's spot prices will therefore not be fueled by frenzied buyers whose over-reliance on last minute purchases have forced them to bid up the prices to obtain needed supply. Suppliers, of course, will be influenced by their best projection of next summer's gas and NOx prices. The cost of these vital inputs has risen steadily from about $2 MMBtu and $6lb in 1999 to well over $50 MMBtu and nearly $50lb now.[34] Estimates of the cost of these inputs will heavily influence forward prices more than anything else. The rise in the cost of these critical elements will inevitably affect forward prices, but this will be based on analysis and expectations for next summer, and not last summer. Therefore, as discussed later in the order, we will not mandate forward contracts at specified prices. Moving to forward markets, a buyer's willingness to pay and a seller's ability to demand high prices is greatly reduced compared to real-time. Generators have made it clear in this record that they have a strong preference for long-term markets and we emphasize that we expect them to respond accordingly. Their participation in long-term markets is crucial to mitigating prices in the near term. Of course, the long-term solution is to build generation and transmission additions.

Many pleadings argue that moving to forward markets, in and of itself, will dampen any seller's market power. We agree. However, we also recognize that the elimination of the PX buy/sell requirement

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[34] The California Commission argues that the cost figures cited by the Commission are inaccurate. We respond to these arguments later in this order.

will move a considerable amount of load from the spot to the forward market at one time and that some have argued that this will create yet another strong sellers' market. To address concerns about potentially unjust and unreasonable rates in the long-term markets, we will monitor prices in those markets and also adopt a benchmark that we will use as a reference point in addressing any complaints regarding the pricing of long-term contracts negotiated over the next year, after which time the sudden increase in forward demand will have subsided. In determining an appropriate benchmark, we note that the average embedded generation cost component of the IOUs' rates, which were frozen when restructuring began, was about $67.45/MWh.[35] Moreover, since the $67.45 figure reflected a 10 percent rate reduction from pre-restructuring levels, the pre-restructuring rates were about $74/MWh. In November, Duke Energy reported that it had offered to supply SDG&E's entire 3,300 MWs of load for five years at a fixed price of $60/MWh (escalated at three percent per year).[36] Since that time, gas prices have hit the $50/MMBtu level and Duke Energy is now considering a price in the $80/MWh range. We note that even this higher figure is close to the $74/MWh level of the pre-restructuring rates and is but a fraction of the current spot electricity prices. While we do not have jurisdiction over retail rates, it is our

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[35] Several parties (*e.g.* WPTF at 24) state that the average cost of generation under the cost-based rates at the time restructuring began in 1998 was $67.45/MWh.

[36] SDG&E disputes these claims in a December 14, 2000 pleading in this proceeding.

view that five-year contracts for supply around-the-clock executed at or below $74/MWh can be deemed prudent.[37]

Given the current market conditions and the rising cost of generation inputs, we believe that negotiated long-term prices that are below the levels of the pre-restructuring rates are just and reasonable. We expect that buyers may elect to negotiate above those levels to the extent they believe the particular contract or supplier brings value which suits their needs (*e.g.* shorter-term contracts, favorable terms and conditions, assignment of the risk of variable cost exposure, the particular characteristics of the supplier or its resource portfolio, etc.).[38] Sellers of long-term service currently have market-based rate authorization. We are not establishing a new standard for market-based prices for long-term contracts. Rather, as discussed above, we are providing an advisory benchmark to assess potential complaints regarding long-term contracts. This will assist buyers and sellers over the next year when so many MWs will be

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[37] Under long-standing Supreme Court precedent, our wholesale rates must be considered just and reasonable for purposes of flow-through in retail ratemaking. *See*, Nantahala Power and Light Co. v. Federal Power Commission, 384 F.2d 200 (4th Cir. 1967), cert. denied, 390 U.S. 945 (1968); Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354 (1988).

[38] For example, in times of increasing fuel costs, short term prices may be higher than reflected in a negotiated five year contract, while in times of decreasing fuel costs, short term prices may be lower. Also, parties may negotiate the allocation of risk that fuel prices may change and this risk allocation will be factored into the negotiated rate.

entering the forward market at one time. This advisory benchmark should not be interpreted as establishing a price floor on forward contracts, which may justify a lower per MWh price. We also believe that concerns about the availability, pricing and prudence of forward contracts may be more quickly resolved if all affected parties - - buyers, sellers and state officials - - attempt to develop a mutually agreeable plan for the initial round of forward contracts. We believe that a conference may provide the best forum to reach agreement in the short time available, and we encourage the parties to explore these types of processes.

In order to corroborate our benchmark and to adjust it if necessary, we direct all sellers with market-based rate authority to report to this Commission no later than January 2, 2001, on a confidential basis, round-the-clock long-term products in annual increments between two and five years which they are willing to offer in California. These informational reports should include price, terms and conditions, and amounts. We will also rely on this data to assess the supply and prices in the forward markets. To the extent that parties prefer, for the purposes of transparency, to report on a non-confidential basis or to post these offers on their websites, they may so advise us.

5. Restore California's Original Objective of a Small a Real-Time Market

The second facet of our proposed mitigation of spot prices, which we reaffirm today, is the elimination of chronic underscheduling. We pointed out in our November 1 Order that the ISO had been

called upon to provide as much as 6,000 MW of load in real-time as the supplier of last resort. This jeopardized system operations and created a strong sellers' market and higher prices as real-time approached. As we noted, as a result of the underscheduling, the ISO was effectively transformed from supplying the balancing services needed to provide reliable transmission to becoming a market participant and administering a sizeable energy market. Our November 1 Order proposed to require that market participants preschedule their load and imposed penalties when loads in real-time exceeded more than 5 percent of an entities load. We also removed the financial incentive for generators to favor the real-time market by directing that they receive the capacity payment for replacement reserves or the energy price, but not both. In this Order we generally reaffirm our proposals on underscheduling, but with certain clarifications discussed below.

Removal of the mandatory buy/sell requirement and elimination of chronic underscheduling will directly limit the amount of load in the most volatile spot market - the real-time imbalance energy market. Just as importantly, we believe that this reform will allow the ISO to focus on the business of running the transmission system rather than a marketplace. Even at peak times, only about 2,000 MW (*i.e.*, about 5 percent of peak load) will now be in the real-time market, down two-thirds from the prior high of 6,000 MW. This will, therefore, substantially reduce the cost exposure to buyers who now can move 4,000 MW of load into the forward markets. We again emphasize that this form of price

mitigation is very effective without introducing traditional cost-of-service pricing which reflects the cost of the assets without any regard to market conditions. Some form of administratively determined price would simply dampen the supply response in the long run.

6. Limitations on the Single Price Auction

The last element of our proposed price mitigation is the $150 breakpoint above which suppliers receive their actual bids, subject to certain reporting and monitoring requirements, but would not set the clearing price. As further discussed herein, we reaffirm the use of the $150 breakpoint but only on an interim basis. We also will clarify the $150 breakpoint is not a hard price cap and, as discussed below, will provide expedited procedures for analyzing prices above $150.[39]

By establishing a $150 breakpoint and not pricing every MWh at the clearing price, spot prices will no longer be magnified. This will provide substantial relief to the buyers who remain in this market. While the breakpoint itself has received the most attention and discussion in the comments, it is not the most important of our mitigation measures. In fact, it is simply a monitoring safety net for what will be vastly reduced spot market purchases.

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[39] Many have argued that we should establish a hard cap instead of a breakpoint; however, price caps have been in effect for some time already and have not stabilized these markets. In this order, we directly address the fundamental market flaws as a means of stabilizing these markets and find that continued use of a price cap is not a necessary or appropriate element of the remedial package. We address the commenters' arguments further in later portions of this order.

Because load-serving utilities will move the majority of their load out of the ISO's balancing market, this ISO market will now be a residual market rather than a primary one. This is an important point because it means that only 5% of the load will remain in the ISO's balancing market and require this additional price mitigation measure. We emphasize that, by design and definition, spot markets must be allowed to reflect the price swings which capture their temporal nature. In markets such as these, which are the closest to when demand must be met, sufficient supply often manifests itself by dramatic price drops while tight supply can produce dramatic price increases. This is the nature of spot markets. Those who remain in the spot market for buying their residual load or selling their residual supply should be there in full recognition of the effects on price of last minute sales and purchases.

As to the particular level of the breakpoint, recent gas and NOx prices are hovering at $50/MMBtu and $50lb, respectively.[40] This would produce energy prices of between $400 - $500 for combined cycle gas facilities with heat rates between 8,000-10,000 Btu/kWh. Since gas is the marginal fuel which produces over 50 percent of the energy in California, we see good reasons not to lower the breakpoint under prevailing conditions. On the other

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[40] Average California regional gas prices peaked in the range of $7-$12 for the week ending November 17, 2000, National Gas Intelligence Weekly Gas Price Index, Vol. 13, No. 28. More recent prices have reached the $50 level. NOx costs for the San Diego area remain near $50/lb, Cantor Fitzgerald Market Index, November 22, 2000.

hand, we will not raise it in the face of these higher costs. We are firmly committed to monitoring prices and to raise the breakpoint only if the goals of generation adequacy and service reliability are threatened generally. As to those commenters who suggest that we index this breakpoint, we reiterate that our primary mitigation measure is to move load and supply to longer-term forward markets. This process will be enhanced by simplicity and transparency in the spot markets. Moreover, the wide swings in spot gas prices over the last month demonstrate that indexing would result in a constantly changing breakpoint. We see no compelling reason to add the complexity of multiple breakpoints or to index a single breakpoint since this will be a small part of the market. Moreover, this particular monitoring program is interim and will be replaced by a permanent program in only four months.

7. Commitment to Ongoing Market Monitoring

We are very aware of our responsibility under the FPA to monitor markets to ensure that rates in the markets remain within a zone of reasonableness.[41]

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[41] *See, e.g.*, Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486, 1509 (D.C. Cir. 1984) (*Farmers Union*) ("FERC's methodology . . . exposes a range of permissible prices that would exceed the 'zone of reasonableness' by definition, unless competition in the oil pipeline market drives the actual prices back down into the zone. But nothing in the regulatory scheme itself acts as a monitor to see if this occurs or to check rates if it does not. That is the fundamental flaw in the Commission's scheme."); Environmental Action v. FERC, 996 F.2d 401, 410 (D.C. Cir. 1993) (Finding a flexible pricing approach acceptable, the court noted that the Commission "ordered disclosure of all

While parties have raised an array of price cap or other mitigation proposals (as discussed in detail infra), we believe our $150 breakpoint is an appropriate complement to the residual markets and will allow the markets to operate while affording purchasers a monitoring safety net. Prices for gas and NOx have risen substantially and will no doubt be reflected in higher prices even with our market reforms in place. Our monitoring will give purchasers the assurance that these cost factors have contributed to the higher spot prices rather than the exercise of market power. In implementing our monitoring, we will rely on several indicators of potential market power, including: the outage rates of the seller's resources, the failure to bid unsold MWs into the ISO's real-time market, and variations in bidding patterns for the same or similar resources (*e.g.* bidding large blocks of capacity at a low price and a small amount of capacity at a high power price for the purpose of setting the market clearing price for the entire amount). While the presence of one or more of these factors will not necessarily result in price mitigation, it will serve as a clear signal for careful review. We fully realize that sellers may bid above their marginal cost in times of scarcity. We intend to close our review of as-bid transactions within 60 days after the transaction report is filed with us. Absent notification by the Commission or its staff (*e.g.*, a data request, order, or other written notification from the Commission) within 60 days all transactions will be considered final and will not be mitigated. If the Commission does not issue some

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transaction prices, thus putting WSPP members on notice that their transactions would be monitored.").

form of written notification within 60 days, refund liability will automatically end. If notification is received, refund liability will continue until the review is terminated and a final Commission order or staff letter is issued. This, in conjunction with the fact that bids will not be mitigated if they simply reflect higher costs, should provide both flexibility and finality to the marketplace. It will also provide customers protection by providing early review of as-bid prices that may not be just and reasonable and prompt rate relief for prices that are mitigated..

We also intend to perform this monitoring for only an interim period until a more comprehensive approach can be developed. We therefore direct the Director of our Division of Energy Markets in the Office of Markets, Tariffs, and Rates to convene a technical conference as suggested by the ISO. The Conference will be held no later than January 25, 2001. The purpose of the conference will be to develop a comprehensive and systematic monitoring and mitigation program which incorporates appropriate thresholds and screens and specific mitigation measures if those thresholds and screens are breached. In this regard, we believe that well-defined and timely price mitigation should eliminate the need for after the fact reviews and introduce price stability and certainty in the ISO markets. We expect the input of all interested market participants and are particularly interested in the views and expertise of the ISO's market monitoring unit both in assisting our staff in developing this program and in implementing it. We direct our staff to submit a proposed plan to us no later than March 1, 2001, so that the Commission can notice the plan, order any

needed modifications and implement the plan by May 1, 2001. This is the date on which we will terminate the PX's rate schedules (as discussed below) and, therefore, all monitoring of the PX will cease on that date. The Commission's approved permanent monitoring will replace our interim monitoring for the ISO's markets on May 1, 2001.

8. There Are No Easy Answers

The pleadings clearly demonstrate that there is no single right answer to solving this market's problems. Many buyers in this market ask us to impose some form of price control (*e.g.*, a simple cap; a load differentiated cap). We carefully considered these proposals and recognize that they have the appeal of potentially lowering prices in the very near term. However, the devices are arbitrary and have unforeseeable economic consequences, often to the detriment of consumers on the electric system.[42] In a practical sense, they are a form of cost based regulation and lowering prices in the spot market will again create biases between markets and, further, not provide sufficient incentives for building the new generation resources that are critical for California. Every time we intervene in one market, we affect other markets and prevent, rather than support, the development of efficient, competitive bulk power markets.

Some (*e.g.*, Department of Energy) have requested that we force generators to sell into the

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[42] Indeed, the existing purchase price cap led to a severe reduction of bids into the ISO's markets which, in turn, seriously threatened reliability by forcing the ISO to scramble at the last minute to obtain needed supplies.

ISO's market and bid in at their running costs. While this proposal is appealing at first blush, because it seems to use market mechanisms (*i.e.*, marginal cost pricing) rather than traditional asset-based pricing, this is simply another form of cost based regulation which attempts to arrive at the cost that a properly functioning market would produce. However, any attempt to simulate how this market would work under perfect conditions, such as the absence of scarcity, will not induce supply entry. Moreover, it can create pricing distortions in the forward markets at a time when it is critical that forward markets develop and mature and take their place as an unbiased option for all market participants. We have elected to proceed by accommodating the economic operational changes that have already occurred in the market, with an approach of letting the market set the prices in response to changing conditions and growing demand, subject to appropriately tailored mitigation because it has the fewest flaws of any of the approaches presented on the record. We cannot afford to stymie entry and we therefore chose to err on the side of relying on the market to set the scarcity price subject to our monitoring rather than depressing prices and running the risk that much needed supply goes elsewhere. We will gain experience with both the interim and permanent monitoring programs and will make needed changes as we go forward.

9. Justness and Reasonableness of Rates

In our November 1 Order we found that the electric market structure and market rules for wholesale sales of electric energy in California are

seriously flawed and that these structures and rules, in conjunction with an imbalance of supply and demand in California, have caused, and continue to have the potential to cause, unjust and unreasonable rates for short-term energy (Day-Ahead, Day-of, Ancillary Services and real-time energy sales) under certain conditions. We stated that while the record did not support findings of specific exercises of market power in these spot markets, and while we were not able to reach definite conclusions about the actions of individual sellers, there was clear evidence that the California market structure and rules provide the opportunity for sellers to exercise market power when supply is tight and can result in unjust and unreasonable rates under the FPA.

Several parties have challenged these findings or have sought clarification of them. Dynegy argues that the Commission erred in finding that the rates in California were unjust and unreasonable. Dynegy asserts that the Commission should look at the entire two and one-half year period since the California market opened and the approximately $11 billion in net benefits that consumers got over that period. It further argues that any remaining price increase is due to scarcity, not the abuse of market power, and justifies the price increases at issue. Similarly, Reliant asserts that the higher market prices in California were attributable to market fundamentals and are not unjust and unreasonable. Enron asks the Commission to clarify that it has not found that the actual rates charged by Enron (and other market participants) during the summer of 2000 were unjust and unreasonable, and that the Commission reject the use of short-run marginal

costs for measuring market power. Calpine also argues that the Commission has made no findings in these proceedings that any individual market participant's rates were unjust and unreasonable. Likewise, Duke asserts that the Commission must confirm that it has not found that the overall level of summer 2000 prices were unjust and unreasonable, and that the Commission should reconfirm that there is no evidence that any improper exercise of market power caused the high prices.

As an initial matter, we note that the November 1 Order did not find that all rates, at all times, were unjust and unreasonable in these spot markets. Nor did we make findings about whether particular rates charged by specific sellers during the summer of 2000 were unjust and unreasonable or that any individual sellers exercised or abused market power. Further, although the record has now been supplemented with additional information and evidence, nothing has been presented that would cause us to change the findings in the November 1 Order or that would permit us to further refine the findings that were made.

We have been faced in this case with the difficult question of what makes a market-based rate unjust and unreasonable. There is no precise legal formulation for setting a just and reasonable rate and no precise bright line for when a rate becomes unjust and unreasonable. Under long-standing Supreme Court case law, rates must fall within a zone of reasonableness where the rates are neither so low as to be "less than compensatory" nor so high

as to be "excessive" to consumers.[43] While high prices in and of themselves do not make a rate unjust and unreasonable (because, for instance, underlying production prices may be high), if over time rates do not behave as expected in a competitive market, the Commission must step in to correct the situation.[44] Further, while exercises of market power may cause a rate to be unjust and unreasonable, in the circumstances here, independent of any conclusive showing of a specific abuse of market power, a variety of factors have converged to drastically skew wholesale prices under certain conditions: significant over-reliance on spot markets which by their very nature can produce dramatic price increases when supply is tight; significant increases in load combined with lack of new facilities as well as reduced availability of supply from out of state; chronic underscheduling; and lack of demand responsiveness to price. There is not sufficient evidence on this record to find that particular sellers have exercised market power or that they have violated Commission-approved market rules. Moreover, going forward, we have no assurance that rates will not be excessive relative to the benchmarks of producer costs or competitive market prices, due to the circumstances listed above. Therefore, we reaffirm our findings that unjust and

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[43] *See, e.g.*, Farmers Union Central Exchange, Inc., 734 F.2d 1486, 1502 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1034 (1984) (*Farmers Union*); FPC v. Hope Natural Gas Company, 320 U.S. 591, 602-03 (1944).

[44] *See, e.g.*, *Farmers Union*, 734 F.2d at 1509; Environmental Action v. FERC, 996 F.2d 401, 410 (D.C. Cir. 1993) (*Environmental Action*).

unreasonable rates were charged and could continue to be charged unless remedies are implemented.

In light of the circumstances presented by California markets, the Commission will actively monitor for exercises of market power as well as other factors that may lead to unjust and unreasonable wholesale prices. As discussed in the mitigation section, there are several indicators of potential market power which we will closely scrutinize for future sales, including: the outage rates of the seller's resources, the failure to bid unsold MWs into the ISO's real-time market, and variations in bidding patterns for the same or similar resources. Also, we have ordered the development of a comprehensive and systematic monitoring and mitigation program for the spot markets which incorporates appropriate thresholds and screens and specific mitigation measures if those thresholds and screens are breached, to be in place by May 1, 2001. In addition, we have established a benchmark for just and reasonable long-term prices and will monitor the supply and prices for long-term products.

In response to Dynegy, we agree that in analyzing the reasonableness of rates in a particular market we cannot look at prices based on an isolated time period, but rather must look at a representative time period. We further agree that we need to distinguish scarcity rents from exercises of market power; however, we disagree that, absent exercise of market power, prices are necessarily just and reasonable. Our analysis must be, as discussed above, based on a determination of whether the rate falls within a zone of reasonableness.

C. Requirement to Sell Into and Buy From the PX

The cornerstone of our price mitigation program, our proposal to eliminate the PX buy/sell requirement, received overwhelming support from parties with a broad spectrum of interests. For example, the California Legislature (at 3) states that: "We applaud the Commission's desire to see California move away from spot market rates and towards a portfolio that strikes a balance of long-and short-term contracts, with the aim of both stable costs and reasonable costs." The one notable exception is the California Commission (at 41), which states that: " [the Commission's] elimination of its 'Buy' requirement does not eliminate the California Commission 'Buy' requirement." The California Commission emphasizes that its "buy" requirement will remain in place until the California Commission removes it.[45] We take this opportunity to emphasize that eliminating any mandated reliance on the spot market represents the single most important aspect of wholesale market reform and is one of the most critical components of all the immediate market reforms necessary to correct the pricing problems in California electric markets and provide long-term protection of customers. According to the California Commission, because the state has an appropriate role in crafting long-term solutions with respect to the elimination of the buy/sell requirement, we should modify our proposal. We disagree. Immediate action is crucial to ensure that

[45] A separate statement of Commissioners Duque, Neeper and Bilas strongly supports removing this restriction noting that they have previously voted to end the PX monopoly.

the "Buy" restrictions imposed by the California Commission do not undermine interstate wholesale power markets.

As we have previously acknowledged, the California Commission is correct that it has authority over the prudence of an IOU's procurement practices for providing retail service. However, we conclude that the current PX buy/sell requirement produces an unworkable spot energy exchange that does not operate as a market. Rather, the mandatory participation requirement of regulators is producing rates that are not just and reasonable during certain periods. Further, although we are removing the mandatory buy/sell requirement from the PX tariff under our jurisdiction, we must recognize that this action alone will not serve to rectify the situation. As long as the California Commission continues to require (either directly or indirectly) the IOUs to sell or purchase the bulk of their needs from the PX, volatile short-term energy prices will continue to engulf the market. Unless this restriction is removed by the California Commission, the wholesale markets under our jurisdiction will continue to produce prices which are unjust and unreasonable during certain periods. In light of our statutory obligations to ensure just and reasonable wholesale rates, we therefore further conclude that it is necessary to take the unusual step of terminating the PX's wholesale tariffs which would enable it to continue to operate as a mandatory exchange. We do not take this step lightly, particularly since we have concluded that buyers need more, not fewer, supply choices to achieve adequate risk management and

lower prices. However, it is only by eliminating the PX's exclusive mandatory exchange that we can assure that prices in California wholesale markets will be just and reasonable.

We recognize that California Governor Davis' December 1, 2000 letter filed in this proceeding states that the California Commission has been directed to expeditiously develop benchmarks to assure the reasonableness of forward contracts by the California IOUs without unfairly second guessing these decisions in later years. It is possible that we may be able to re-institute the PX tariffs at a later time, depending upon the outcome of the California Commission's efforts or other changed circumstances. [46] In the meantime, however, to ensure that the market reforms proceed in a timely manner, we will terminate the PX rate schedules effective as of the close of the April 30, 2001, trading day.[47] The interim time period should allow parties sufficient time to negotiate and finalize alternative arrangements and to prepare a more balanced portfolio. We believe that a longer time period would merely protract negotiations in the critical summer period.

Many parties complain that the California Commission's current prudence review standard frustrates or impedes the negotiation process for

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[46] As we noted in the November 1 Order, the PX is free to reconstitute itself as an independent exchange with no regulatory mandated products and offer the services needed by market participants.

[47] PX FERC Electric Tariff, Third Revised Volume No. 1 and PX Trading Services Second Revised Rate Schedule FERC No. 1.

longer term supply arrangements. For example, Duke Energy has offered to supply the full native load requirements of SDG&E for a period of five years at a fixed price of $60.00MWh (escalated at 3 percent per year). Duke Energy and others have previously offered to supply energy under long-term fixed-price contracts at less than the IOUs' embedded cost rates. We re-emphasize that the California Commission has been directed by the Governor to develop benchmarks to help address these prudence review concerns.

The California restructured market is the only one that began without some form of buy-back contract with the new operators of the divested generating facilities. In other markets, such contracts are an integral component of the divestiture transaction and are intended to protect customers from spot price volatility during the early years of the market. As service under these initial contracts declines over time, parties are free to negotiate mutually agreeable forward contracts to continue this hedging strategy.

The California Commission (at 5 and 21) states that the Commission should address the reasonableness of forward prices by mandating medium-term forward contracts at regulated prices, modeled on "vesting contracts" used in New York (*i.e.*, utilities bought back power from the new owners of the divested units under long-term contracts). This proposal is simply not workable because the New York restructuring model, as discussed above, included the buy-back terms and conditions as an integral component of the divestiture transaction (and was therefore reflected

in the negotiated purchase price) and the two components cannot be decoupled as suggested by the California Commission. The fact that parties do not have recourse to buy-back arrangements is due to the buy/sell spot market restructuring model that California initiated. The generation asset sales transactions cannot be unraveled after-the-fact to impose an obligation on the new generation owner that was not reflected in the agreed-upon sales price.

We are mindful that our elimination of the PX buy/sell requirement will move a considerable amount of load into the forward markets all at one time. While we have not mandated a price for long-term sales, we are establishing, effective for one year an advisory benchmark for a five-year product which buyers and sellers can consider as instructive for evaluating the reasonableness of long-term prices and which we will consider in addressing any complaints about prices in the long-term markets.[48] In light of the current market conditions, and the rising cost of generation inputs, the prices in effect when restructuring began constitute a reasonable benchmark.

According to Duke Energy and others, if the Commission's reforms are implemented and linked with state policies that do not favor spot purchases over forward contracts a wide array of bilateral forward contracts will be negotiated. State Senator Bill Morrow states that urging greater reliance on forward contracts will have little effect unless the utility purchasers have some safety from

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[48] The specifics of the advisory benchmark are described in the overview, Section B.

"reasonableness review" by the California Commission.

At present, the California Commission uses the PX as an index of reasonable purchased power costs. We agree with Duke Energy that the presumptive reasonableness of the PX prices causes the IOUs to favor spot purchases and avoid long-term purchases. When state policies provide that the only "safe harbor" from prudence reviews is in spot markets, the inevitable result will be excessive reliance on spot markets. Our elimination of the PX rate schedules will remove the medium for favoring spot sales and should provide the IOUs with every incentive to purchase the most cost-effective portfolio rather than to simply purchase in a PX. That portfolio will no longer be skewed by a favored and mandatory spot market. We have established our advisory benchmark so that sellers and purchasers can have a reference point for the reasonableness of their long-term contracts during negotiations. In order for the California consumers to see the benefits of long-term contracts, the California Commission must quickly provide the IOUs with timely approval of their long-term purchases using policies that apply evenly to short and long-term contracts. While the Commission can only encourage such reforms, progress in eliminating artificial barriers to forward contracting are essential to stabilizing California's wholesale markets..

1. Self Supplying IOU Load

In our proposed order, we noted that while the IOUs have divested their fossil fired generation, they still own a substantial amount of low cost hydro and

nuclear generation and purchase power contracts (approximately 25,000 MW).[49] In this regard we stated the following:

> Without this buy/sell restriction on wholesale trades, the IOUs are free to pursue a portfolio of long-and short-term resources and access whatever wholesale markets are suited to meeting the needs of their retail customers (including bilateral markets, the PX, and others such as Automated Power Exchange, Inc.) or by providing power from their own resources to serve their own load and self provide the necessary ancillary services.[50]

At present, the IOUs still own about 25,000 MW of resources. Under the current market structure, the IOUs are required to sell these low cost resources into the spot market and buy back the same amount of power at the market clearing price. As we said in the November 1 Order, by eliminating the buy/sell requirement the IOUs will be able to provide power from their own resources to serve their own load and self provide the necessary ancillary services. This proposed market reform, which we reaffirm here, is not intended to change the current use of these resources, but simply addresses the spiraling costs caused by the current market.

We conclude that it is essential for the IOUs to cease selling and repurchasing their own generation

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[49] As noted in the November 1 Order, the IOUs own nuclear and hydro generation whose variable operating costs are approximately $16/MWh and no fuel costs for hydro. 93 F.E.R.C. at 61,361, n. 51.

[50] *Id.* at 61,360-61.

at spot prices. The best way to mitigate cost exposure is for the IOUs to cease selling and repurchasing what they already produce. Effective on the date of this order, the IOUs are no longer authorized to sell their resources into the PX.

By providing power and energy from their own resources to serve their retail load, the IOUs will no longer be treating their own generation as a wholesale sale subject to our jurisdiction. Rather, the IOUs' approximately 25,000 MW of resources will revert to being subject to the state's retail ratemaking authority instead of the Commission's ratemaking authority (except when used to make sales for resale). In simplest terms, the Commission has effectively "de-federalized" this portion of the market effective as of the date of this order . Contrary to the scheme of AB1890,[51] this market reform will immediately reduce by approximately 60 percent the IOUs' exposure to the spot market during peak periods. During most off-peak periods the IOUs will be able to self supply most, if not all, of their requirements and almost entirely eliminate their dependence on the spot markets. [52] As previously discussed, this will place 25,000 MW of resources under the jurisdiction of the California

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[51] AB 1890 was the legislation effecting electricity restructuring, signed by Governor Wilson on September 23, 1996, California Statutes 1996, Chapter 854 (Restructuring Legislation or AB 1890).

[52] For example, the load in the PX Day-Ahead market (for delivery on December 12, 2000) was below 22,700 MW. However, the energy cost for the day was over $100 million. Most if not all of the IOUs' load could have been supplied from their own resources, and this purchase power expense could have been avoided by eliminating the buy/sell requirement.

Commission that it can price at cost-based rates, if it so chooses. However, until the IOUs execute long-term contracts, they will be residual buyers for the remainder of their requirements in the spot markets. To the extent the IOUs' resources exceed their load at various times, they are free to sell any surplus at wholesale, pursuant to their Commission-filed rate schedules. This market reform received little attention in the comments, with the notable exception of the comments filed by the California Commission.

2. California Commission Comments

The California Commission (at 20) recognizes that PG&E and SoCal Edison have retained substantial hydroelectric, nuclear and QF portfolios and SDG&E has rights to a share of the output of the San Onofre Nuclear Generating Station, plus purchase power contracts. Under the current buy/sell requirement, these resources are bid into the market as price takers (*i.e.*, at zero cost) to ensure their dispatch. According to the California Commission, revenues from these resources were substantial last summer, as utility- owned generation received the high market clearing prices. Finally, these revenues serve to sharply reduce the IOUs' exposure to high market prices.

Inasmuch as the California Commission's comments support perpetuating the current market design, which contributed to the abnormal price volatility last summer, we find their position disturbing and contrary to the interests of retail ratepayers. The IOUs are both buyers and sellers. The prices the IOUs pay for buying back their own

resources through the PX serve simply to value those resources for stranded cost purposes. As long as the IOUs pay less than the frozen retail rates, they can use the difference to write off stranded costs. This entire formula breaks down if the IOUs buy back their MWs at more than what they can charge through retail rates. This is exactly what happened last summer. Moreover, the process is unnecessary even for stranded costs purposes because the IOUs have now valued or recovered all of their stranded costs.[53]

The California Commission has not justified continuation of market rules requiring the IOUs to buy and sell power exclusively through the PX, other than stating that state law (Assembly Bill 2866) prohibits the California Commission prior to June 1, 2001 from removing this restriction. In light of the profound distorting effect this restriction has on the wholesale markets and the financial integrity of the IOUs, we have no choice but to eliminate this restriction as of the date of this order. Any benefits the IOUs receive from selling solely into the spot markets are far outweighed by the financial harm of buying solely in the same spot markets, since the IOUs are net buyers of power. While the California Commission has relied on PX prices in calculating the IOUs' stranded costs, as we stated in the

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[53] The conflicting incentives where the IOUs are both buyers and sellers also occurred in the QF program. Our experience there is instructive in this regard. The IOUs had the irreconcilable goals of needing to minimize QF costs as buyers and maximizing QF revenues as partial owners of QFs.

November 1 Order, these stranded costs have now been recovered or valued.[54]

D. Underscheduling of Load and Resources

In order to reliably operate the transmission system, the ISO must continually balance generation and load. There is general agreement that the ISO's real-time balancing market should be limited to fine-tuning supply and demand and that the excessive amount of energy regularly being transacted in this market is inappropriate. The ISO imbalance market was intended to perform a reliability function and not be used as an energy exchange. As noted in our prior order, managing a significant amount of load and generation in real-time raises reliability concerns. Creating incentives for load and suppliers to bid and schedule in the forward markets will help reliability and promote more competitive markets. As a result, our order attempted to address this problem with a balanced approach to encourage both load and supply to schedule prior to real-time.

The Commission proposed to require market participants to schedule 95 percent of their loads prior to real-time as well as to make a number of interrelated modifications to address the underscheduling problem. The Commission proposed: (1) eliminating different price caps in the ISO imbalance market and the PX exchange markets; (2) imposing a penalty charge (two times the cost of energy not to exceed $100MWH) for deviations in scheduling in excess of five percent of

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[54] Duke Energy (at 7) notes that, to date, stranded cost recovery estimates show PG&E collected $8.3 billion and SoCal Edison collected $9.3 billion.

an entity's total hourly load requirements; [55] (3) disbursing of penalty revenues to the loads that scheduled accurately during the trading hour in which the charges were incurred; and (4) limiting suppliers who participate in the real-time market to either a capacity payment for replacement reserves or energy payments, but not both. The order explained that elimination of the PX buy/sell requirement and allowing the ISO to procure resources on a more forward basis would also address the problem of underscheduling. Our hope is that implementing these comprehensive market reforms will greatly reduce the application of the underscheduling penalty.

Virtually all commenters agree with the Commission's general approach to the underscheduling problem. Various commenters note that underscheduling is a symptom of many of the other market flaws. For example, SoCal (at 46 - 47) notes that because the Commission quite correctly addressed all of these flaws the underscheduling problem may now largely subside on its own without the need of a penalty provision. PG&E (at 42) believes that if generators are obligated to sell to load-serving entities in a forward market the underscheduling problem should disappear and obviate the need for a penalty. SMUD (at 26) made similar comments. While there is general agreement on this issue, several specific areas warrant further discussion and clarification as discussed below.

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[55] We clarify that the hourly energy cost calculation will include any Out-of- Market purchases for that trading hour.

1. The Proposed Five Percent Deadband

a. Comments

Several parties suggest that the deadband should be larger than five percent (*e.g.*, So Cal suggests 9 percent (at 48); Reliant (at 29) suggests 10-15 percent; SMUD (at 27) suggests 10 percent with no penalty for force majeure-type conditions.) SoCal Edison said that the ISO's preliminary system load forecast projection made two days in advance of the trading day is off by 4.9 percent and for this reason we should enlarge the deadband.

Several other parties (*e.g.*, AES NewEnergy, Inc.) request that the deadband be relaxed for small load serving entities such as new Energy Service Providers (ESPs) that have much less diverse loads than the IOUs.[56] They argue that without some relief they will be unable to enter the market, which will ultimately undermine the goal of developing a robust retail market. Southern Cities recommends a minimum 2 MW allowance (at 6) and a substantially higher penalty than $100/MWH (at 7). The ISO (at 20) recommends that the Commission relax the provision for small entities so that the penalty

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[56] Enron alternatively suggests that the 95 percent scheduling rule could be limited to underscheduling of load only as another way for small ESPs to accommodate uncertainty in their load forecasts. Southern Cities are also concerned if forecasts are higher than actual loads. Similarly, New West Energy believes that the penalty should not apply to scheduling deviations resulting from demand responsiveness programs. Enron also requests clarification that the calculation is based on the entire load of the ESP. We clarify that the penalty applies to underscheduling only and it is based on the entire load of the market participant.

applies to the greater of 10 MW or 5 percent of the shortfall in scheduling.

b. Commission Determination

Load which could have been anticipated and therefore scheduled should not be supplied through the ISO's real-time imbalance market in light of the current reliability problems that exist in California. We believe that no party has supported a real-time imbalance market greater than the 5 percent maximum amount that the ISO intended to balance. With larger deadbands the system operators will be forced to continue to run a spot market for energy and not just balance the system. However, we agree that exceptions for small ESPs (that will serve load previously supplied by the host utility) can be accommodated without greatly expanding this market. In order to encourage entry for alternative ESPs and to accommodate the lack of real-time metering data we will allow a minimum 10 MW deviation for application of an underscheduling penalty. With this modification the penalty will apply to the greater of 10 MW or 5 percent of the underscheduled amount. In other words, the five percent deviation will apply to load of 200 MW or greater. Small entities with scheduling deviations within the 10 MW amount will not be assessed a penalty and will be considered as having scheduled accurately for penalty revenue distribution. This modification for small entities should not significantly expand the ISO's balancing function.

With respect to SoCal Edison, which cites the ISO two day-ahead preliminary load projection, we note that this comparison is inaccurate. This projection is

generally a worst case projection and is therefore usually higher than actual load (*e.g.*, if weather conditions are not actually as severe as projected). Implementation of interruptible load programs can also cause the projections to be higher than actual system loads. In summary, the ISO projections are not generally analogous to an underscheduling error.

Further, we do not believe that modification of the deadband is necessary due to operational concerns. We will not expand the deadband by adopting any of the alternatives that have been suggested. A proposal of a 10 percent deadband would translate into a market of well over 4,000 MW on a peak day. This level places too much of a burden on the ISO to procure needed resources even with our directing the ISO to contract on a more forward basis. Simply put, we will not encourage a greater burden of service on the ultimate provider of last resort – the ISO, for energy procurement at the last minute.

Under the remedies included in our prior order, we encouraged the IOUs to participate fully in the forward markets in order to procure a more balanced portfolio as opposed to the current excessive reliance on the spot markets. Not only will this approach to procuring resources reduce price volatility but it should also reduce the need for procurement and scheduling decisions near real-time.

2. Generation Penalty Proposals

a. Comments

Various commenters argue that a penalty provision should apply to generation as well as load. MWD (at 7) proposes a penalty on generators with

exceptions for small u units (smaller than 50 MW), and renewable resources (wind, solar, and run of the river hydroelectric generation). Independent Energy Producers (at 8). SMUD (at 29) is concerned that generators may not bid their remaining available capacity into the ISO imbalance market. SMUD argues that such generators must provide the ISO and the Commission with relevant data that demonstrates that their bidding behavior was due to real operating conditions and that penalties should be assessed when withholding is actually proven.

b. Commission Determination

We believe that the market changes we adopt today should make the real-time market less desirable for load-serving entities and generation unit owners relative to the available forward markets and the spot markets. In addition to the penalty on load, the proposed order removed the double payment feature for generation that is bid in the real- time imbalance market. Under the current market rules, generators are paid the Replacement Reserve price and the real-time energy price for imbalance energy. By eliminating the double payment, suppliers no longer have the economic incentive to wait for the real-time market to sell power .

Other than removing the double payment feature, no workable penalty mechanism applicable to generation has been proposed. All the proposals include exceptions for various types of generation. The proposals also illustrate the complexity in determining which generators or types of generators will be assessed a penalty and when a penalty will

be triggered. Currently suppliers that are unable to meet scheduled obligations are required to pay the cost of replacement energy purchased in the real-time balancing market. To avoid this result, suppliers may, for example, reserve a certain amount of capacity to self supply in the event of a contingency.[57]

Finally, as the Energy Producers and Cogen Association (at 16) note, a long-term goal should be the establishment of a structure that would facilitate the trading of hourly imbalances among Scheduling Coordinators if the system, as a whole, is in balance. While we would prefer that entities be able to trade imbalances this is not currently an option because positive imbalances do not exist at the level to alleviate the negative imbalances. As the system normalizes and approaches an equilibrium (with equal amounts of overscheduling and underscheduling), we expect that an imbalance trading program will be instituted.

3. ISO Implementation

In order to implement the proposed market revisions, the ISO states that it must modify its Scheduling Infastructure and Applications software as well as its Settlement/Billing System. The ISO explains that implementing the automated billing changes is the most onerous and could take as long

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[57] Parties have proposed alternative penalty provisions (*e.g.* graduated penalties), which we have not adopted. We note that as the ISO will have to integrate a number of interrelated market reforms under this order. As the ISO gains operating experience it is free to propose a modification to penalty procedures.

as four months to implement. Alternatively, the ISO suggests an approach using blends of automated and manual processes which could be accomplished by January 1, 2001. The ISO cautions that this approach could be extremely time-consuming due to the frequent rerunning of settlements that are caused by changes in meter data.

In order to accommodate the concerns raised by the ISO and the need to implement the needed market revisions, we direct the ISO to implement a blended automated/manual approach. We also suggest that, in order to simplify the settlement process, the ISO is authorized to temporarily institute estimated billing procedures. Under this billing method, simultaneous manual billing re-runs can be avoided until the automated system is operational. Disputed imbalances in billings and payments can be placed in temporary escrow accounts prior to final billings. We direct the ISO to have its automated billing procedure in place by May 1, 2001.

4. Conclusion

Accordingly, we will require amendments to the ISO Tariff to implement the changes proposed in the November 1 Order as modified above. The ISO is directed to submit a compliance filing making these changes within 15 days of the date of this order.

E. Level of Breakpoint

1. Background

In the November 1 Order, we proposed to implement a temporary modification to the single price auctions of the PX and ISO. We proposed that,

effective 60 days from the date of the November 1 Order, for all short-term markets operated by the PX and ISO (including the Replacement Reserve Market), the single price auctions be used for all sale offers at or below $150. The single market clearing price would be used for the amount of load which clears at or below this amount in the auctions. If an auction does not clear at or below the $150 bid level, suppliers who bid above $150 would be paid their as-bid price for the quantity that they bid.

In addition, we proposed to condition sellers' market-based rate authority by requiring each seller to file on a weekly basis each transaction in the ISO and PX spot markets that exceed $150. All transactions for the prior week would be filed on a confidential basis with the Commission's Division of Energy Markets. We specified that the market data to be included in the report should include the name of the seller, the price and amount of MWs covered by the transaction, the hour(s) covered by the transaction and the incremental generation cost. We also directed the seller to identify legitimate opportunity costs that are known and verifiable that the seller considered in developing its bid. We explained that the data would be used to monitor prices in order to detect potential exercises of market power or otherwise non-competitive market prices and to adjust transaction prices, if necessary to establish just and reasonable rates.[58]

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[58] We imposed a similar reporting requirement on the PX and ISO; however, they would file their reports, including unit availability data, on a monthly basis.

2. Comments

In general, commenters oppose the Commission's price mitigation proposal. Commenters either argue that the $150 breakpoint is too high or too low, that the breakpoint will act as a hard-cap or no cap at all, and the accompanying reporting requirements (supported with opportunity costs pricing) will permit unfettered prices or drive sellers from the market. In addition, commenters argue that the as-bid pricing requirement will increase prices because sellers will submit strategic bids to capture anticipated prices. On the other hand supporters of as-bid pricing argue that it makes no sense to pay people more money than they bid.

The three IOUs argue that the Commission should either impose cost-based pricing rules or at a minimum put in place the load differentiated bid cap approved by the ISO Board on October 26, 2000.[59] They argue that the $150 breakpoint [60] will do nothing to mitigate market power and the resulting high prices faced by California consumers. They contend that the $150 value is far higher than needed to attract investment in new generation, that the figure is higher than the price that a properly functioning market would expect during most system conditions, and most importantly, the proposed enforcement mechanism is so flawed that the breakpoint is unlikely to discipline prices at all.

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[59] PG&E at 26-40, SoCal Edison at 7-27, and SDG&E at 12-14.

[60] Some of the commenters refer to the breakpoint as a "soft cap" or a "hard cap". For purposes of clarity, we will continue to employ the phrase breakpoint.

PG&E and SoCal argue that bids will cluster at or below the $150 price limit during low and intermediate load periods because sellers will construe that level to be a safe harbor under which the Commission will not monitor for market power abuse. In addition, they assert that paying sellers their as-bid price without any constraint will send prices soaring. The reporting requirements on entities such as power marketers who do not have incremental generation costs to report will leave them reporting either meaningless opportunity costs or the actual cost of their purchase price which could be wildly inflated after the power has changed hands several times. [61] Moreover, they argue that the reporting requirements will be kept secret from market participants with no timetable for resolution of the Commission's review process.

DOE is concerned that the $150 breakpoint may not produce just and reasonable rates. While still retaining the single price auction, DOE recommends that the Commission require all existing generation to only bid its marginal cost. However, DOE would exempt generation placed in service after the date of the order from the requirement to bid its marginal cost, though the new generation would not be allowed to set the market clearing price.[62]

Consumer groups such as the California Retailers Association, the California Small Business Association and the California Small Business Roundtable argue that the breakpoint will result in

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[61] IEP also requests clarification on how opportunity cost standards will be applied to power marketers. IEP at 24.

[62] DOE at 6-7.

no effective cap. TURN/UCAN continue to support the load differentiated price cap that was approved by the ISO Board. They argue that the load differentiated price cap is not complex and anyone with a pocket calculator and a copy of the Wall Street Journal could perform the calculation in minutes.[63] TURN/UCAN argue that in justifying as-bid prices with opportunity costs, absent a WSCC-wide cap, it will only take one reported transaction in the WSCC to negate the cap.

The California Commission, the California Legislature, and the CEOB also argue that the breakpoint will not restrict prices. [64] They also support some form of cost-based pricing either by requiring sellers to offer medium-term mandatory contracts at FERC-regulated rates or a load differentiated bid cap. The CEOB also requests that the Commission impose a WSCC region-wide bid cap that is set below the current ISO cap of $250.

The ISO, the PX, and the Market Monitoring Committee (MMC) of the PX have serious concerns that the Commission's price mitigation measures will have several untoward results.[65] The PX and its MMC note that the breakpoint only applies to the ISO and PX markets; therefore, sellers will flee these markets to avoid the reporting requirements. The PX requests that the Commission impose the price mitigation on all near-term trading venues,

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[63] TURN/UCAN at 18.

[64] California Commission at 15-20, California Legislature at 5, and CEOB at 21- 26.

[65] ISO at 8-17, PX at 30-32, MMC at 3-4.

including brokers,[66] electronic bulletin boards, other exchanges and bilateral transactions. The ISO contends that the $150 breakpoint is too generous for base-load units and if history is a guide, prices will hover at that level for more hours than marginal costs would justify. The ISO also argues that tying as-bid prices to opportunity costs will greatly increase prices because of the effects of a regional uncapped market and the likelihood that transactions will leave California only to return daisy-chained or as out-of-market calls. The ISO also believes that the blending of supply prices under the bifurcated market will mute marginal cost signals needed to induce supply and demand responsiveness programs.[67] The ISO is also concerned that the Commission's price mitigation measures may actually exacerbate underscheduling depending upon how high prices are relative to the breakpoint price and the real-time penalty for underscheduled load. The ISO proposes two forms of price mitigation that involve requiring sellers to offer forward contracts with safe harbor benchmark prices.

Both the ISO and PX raise concerns regarding difficulties that may arise in implementing the Commission's price mitigation measure. If sellers use the "as bid" alternative, the ISO and PX will have to immediately record bid-specific information for each bid submitted above the $150MWh

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[66] We note that brokering is not a jurisdictional transaction.

[67] Southern Cities urge the Commission to require the development of a mechanism for informing buyers on a real-time basis of the marginal bids and the resulting weighted average prices such that price signals aren't masked. Southern Cities at 5-6.

breakpoint. According to the ISO, this information can be implemented using blends of automated and manual processes by January 1, 2001; however, this approach will require increased operator intervention in the market and can be extremely time consuming if settlements must be rerun if refunds are ordered by the Commission.[68] The ISO recommends using an automated approach, but notes it will take approximately four months to implement the automated procedures from the date work commences.

The PX anticipates that it will require a minimum of 90 days, and possibly longer, from the final date of the order to implement this procedure depending upon the chosen remedy.[69] According to the PX, it can either modify its software to calculate the total payment to each supplier that offers energy above $150/MWh or the alternative would be to require any supplier who bids above $150/MWh to offer that energy in the PX's Block Forward Market (BFM) Daily Block Market which is a pay-as-bid market. The PX notes that some software changes would be needed to implement the transactions in the BFM Daily Block market; however, according to the PX, these changes would be relatively easy to make.

The ISO and PX state regardless as to how they implement the Commission's price mitigation proposal, they will need to coordinate with each other and other scheduling coordinators with respect to how the ISO manages congestion. According to the

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[68] ISO comments at 11-13.

[69] PX comments at 45-47.

PX, either the ISO must modify the way it calculates the usage charge whenever the energy markets exceed the breakpoint or the PX must modify the way that it collects usage charges whenever the breakpoint is exceeded. In addition, the ISO requests that the Commission impose a cap on the Adjustment Bids that it uses to manage congestion. Moreover, the ISO believes that there is a pending question as to whether the intention in the Order is to cap the constrained market clearing price and pay as-bid, or to allow the market clearing price above $150MWh to be the basis for payment in such a case.[70]

The Bureau of Economics and of Policy Planning of the Federal Trade Commission (FTC) supports the Commission's requirement that the breakpoint expire after 24 months. FTC believes that, in the long-term, an ongoing breakpoint would likely raise prices, create inefficient plant dispatch, and distort generation and transmission investment decisions.[71] However, CMUA believes that the 24-month transition timetable is optimistic and recommends that the Commission plan for a specific process and affirmative finding that the market is workably competitive before terminating any price mitigation measures.[72] In addition, CMUA argues that the use of opportunity costs to support the as-bid price will set a cap tied to the highest price any buyer is willing to pay and will invite litigation of the as-bid amounts. CMUA asserts that the inclusion of

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[70] ISO comments at 12.

[71] FTC at 10.

[72] CMUA at 17-20

opportunity costs will not bring consumers any protection or provide stability for suppliers.

Metropolitan requests that, if caps are to be implemented, the Commission should also impose a lower price breakpoint during off-peak hours and apply the price cap to the WSCC region. [73] Metropolitan argues that the single price auction will not discipline prices during off-peak hours and a breakpoint with the same reporting requirements as the Commission's proposal is needed to ensure that the price of supply bears a reasonable relationship to demand.[74] SMUD also argues that the Commission's breakpoint and unverifiable inclusion of opportunity costs in the as-bid price will not mitigate market power abuses in either off-peak or peak periods.[75] In addition, SMUD contends that the assumptions used in calculating the $150 breakpoint are unrealistic and overly generous to sellers. SMUD proposes a sliding scale, WSCC-wide, price cap applied to all transactions of one month in duration or less for both peak and off-peak periods. SMUD would calculate its price caps by assuming peak and off-peak heat rate values and using the NYMEX Henry Hub price of gas in the calculation. SMUD would apply its price cap to all thermal units with a heat rate less than 14,000 Btu/KWh. Units with a higher heat rate would have a Commission approved cost-of-service rate and these units wouldn't be allowed to

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[73] The County of San Diego and City of Seattle also request that the Commission impose its breakpoint and reporting requirements to the entire western market. County of San Diego at 24 and City of Seattle at 6.

[74] Metropolitan at 13-15.

[75] SMUD at 15-25.

set the market clearing price. The City of San Diego requests that the Commission impose hard caps for different types of generators.[76]

Dynegy argues that the Commission needs to clarify that any refund floor associated with as-bid prices should be based upon opportunity costs. Dynegy states that the "known and verifiable" standard was developed in the context of setting transmission rates and that the transmission provider was required to keep records of the specific purchase that was the basis for the opportunity cost calculation.[77] Dynegy contends that this standard will be very difficult to administer in the context of bulk power trading. Dynegy requests that the Commission state that any review of opportunity costs should take into account the imperfect knowledge that typically exists when bids are placed and should recognize the considerable dose of judgement involved in the bidding process. Dynegy asserts that if the Commission implements too rigid of a standard that bidders will be less comfortable selling into California and the supply shortage will worsen. In addition, if the Commission decides not to implement a "bid-ask" market with no caps, Dynegy requests that the Commission refine the breakpoint to account for the recent run-up of natural gas prices (as high as $50MMBtu at this time). After accounting for the increase in gas costs, Dynegy requests that the Commission update the cap

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[76] City of San Diego at 24.

[77] Dynegy at 31-33, citing Pennsylvania Electric Co., 58 F.E.R.C. ¶ 61,278 (1992) and TransEnergie U.S., Ltd., 91 F.E.R.C. ¶ 61,230 (2000)

prospectively every month so that increases in gas prices do not trigger reporting requirements.

Williams opposes a cap of any kind. However, according to Williams, if the Commission's breakpoint is implemented, it must be lifted on schedule, *i.e.*, December 31, 2002. In addition, Williams, WPTF, and EPSA propose that the Commission escalate the cap by specific amounts every six months.[78] Williams, WPTF, and Enron also request clarification on the definition of incremental generation and opportunity costs in the reporting requirements for as-bid prices. Williams contends that the generation cost definition should include a contribution to a generator's fixed costs (including actual purchase price) and the opportunity cost definition should include broad market forces such as prices in competing markets and all other non-affiliate bids submitted in blind auctions.

Calpine notes that the Commission's breakpoint will not affect its plans to develop large base load combined cycle plants in California.[79] In contrast, GE Power Systems notes that since the Commission issued its November 1 Order, GE Power Systems has received cancellations on orders for 14 natural gas turbines, totaling 408 MW of predominantly peaking capacity for projects in California.[80] Calpine states

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[78] Williams at 11, WPTF at 12, and EPSA at 16.

[79] Calpine at 14.

[80] GE Power Systems at 3. GE Power Systems notes that due to the backlog of orders for its turbines, customers that cancel their orders lose their priority in the queue and that these customer will face a long wait before its next order can be filled.

that it is not opposed to the continual monitoring for the 24-month period proposed in the November 1 Order provided that the Commission adopt measures which provide suppliers with price certainty after a relatively brief period. Calpine and PPL Parties recommend that all prices above and below the threshold become final and no longer subject to refund no later than thirty days after the transaction date. In addition, PPL Parties recommend that the Commission exclude new generation from the breakpoint and reporting requirements.[81]

EPSA and Exelon argue that the breakpoint is vague and will discourage new generation from entering the state. To reduce the burden on Commission staff and generators, EPSA proposes that rather than requiring the weekly reporting of all bids above $150, the Commission should require generators to maintain the information that the Commission seeks for a limited period of time. To determine what behavior or bids would trigger review, the Commission should articulate clear standards or market screens with real world examples. Lastly, the Commission should limit the period for reviewing bids. EPSA proposes that a seller be notified within 15 days that its bid is being formally scrutinized and that the Commission should complete its review within 60 days. [82] Southern Energy Parties suggest that the Commission flag reports within 30 days of receiving them and finalize its review within another 30 days. All bids that are not flagged or pass the final 30 day

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[81] PPL Parties at 36.

[82] EPSA at 15-20.

review would no longer be subject to further review or refund.[83] Southern Energy Parties and Reliant recommend a 60 day period following the submission of the data for the Commission to conclude its review.

Enron urges the Commission to abandon any price caps; however, if a cap is implemented, it should be set at a more realistic level and should sunset after 15 months. Enron requests that the Commission clarify that the breakpoint and reporting requirements and any potential refund obligation do not apply to any other exchanges, bilateral deals, or forward markets, including the PX's block forward markets.[84] Duke Energy, PPL Parties, Reliant and Southern Energy Parties propose that the breakpoint be raised to the pre-existing ISO cap of $250MWh. In addition, they request that the Commission set the breakpoint price as a "safe harbor" under which all bids are deemed just and reasonable and exempt from any refund liability. Duke Energy also argues that the inequity of not applying the breakpoint and reporting requirements to non-jurisdictional entities will negate the benefits the Commission sought in eliminating the ISO's hard cap.[85] Duke Energy also suggests criteria concerning how the Commission should review bids.

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[83] Southern Parties at 49.

[84] Enron at 6-8.

[85] Duke Energy at 43-48.

3. Commission Determination

Commenters propose a wide variety of price mitigation measures that differ from the Commission's $150 single price auction breakpoint and as-bid market. These mitigation measures range from a total return to cost of service based rates to removing all price caps immediately and letting the market fix itself. As discussed below, we continue to believe, despite the volume of comments to the contrary, that the use of the $150 breakpoint and as-bid market combined with the other market changes that we have implemented in this order will discipline prices in California.[86] Moreover, we fully expect the breakpoint to be superseded as a result of our aforementioned adoption of a permanent monitoring plan by May 1, 2001.

We reject proposals to return to cost based regulation. As we discussed in the November 1 Order, prices based upon traditional cost of service are incompatible with fostering a competitive market. As we stated in the November 1 Order, traditional cost-based pricing reflects the cost of the asset without any regard to market conditions. The one thing that California needs most is new supply and a return to traditional cost of service ratemaking will not encourage supply to enter the California market. We note that, under cost-based regulation, California had some of the highest retail rates in the country. Several commenters suggest that the Commission require marginal cost based bids for an

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[86] Effective as of January 1, 2001, the interim $250/MWh breakpoint approved in the December 8 Order will be superseded.

interim period similar to the requirement that the Commission initially authorized in the PJM markets. Commenters recommend that such a requirement be imposed on the California market until it can be demonstrated that the markets are competitive.

We reject these proposals for numerous reasons. First, the market structures in PJM differ radically compared to California. When marginal cost bid caps were required in PJM, the participating investor owned utilities of PJM owned their generating assets, and PJM's Interchange Energy Market was a small economy energy market. In addition, PJM has a requirement whereby all load serving entities must have enough resources to meet their forecasted load and a capacity market that provides additional revenues to the generation owners. Because the PJM IOUs had a balanced portfolio of base, intermediate and peaking capacity, there was no financial harm to the PJM IOUs to bid their variable costs, *i.e.*, if their peaking units set the clearing price, their lower cost base and intermediate units were paid the market clearing price and provide a margin sufficient to recover the utilities' fixed costs on all their assets. Unlike PJM, the California IOUs have divested their fossil generation to various entities while retaining their low running cost hydro and nuclear units. The buyers of these assets do not necessarily have a balanced portfolio that can make up any shortfall that arises from paying a peaking unit its variable costs. In the absence of a capacity market, as is the case in California, if a seller only has peaking units, it would only receive the variable cost of energy and no payment for its fixed cost. Sellers could not stay

in business for long with that revenue stream. Moreover, there would be no incentive for a generator to bid into a market where the only payment would be its variable cost.

The requirement to bid variable cost also neglects power marketers who do not have any generation. A power marketer's incremental cost is the cost of the power that they acquire. Thus, it is unclear what power marketers would be required to bid.[87] If power marketers are only allowed to pass through the purchase price, they will also shun the California market. The arguments on this point from the California IOUs also appear self-serving given that they own mostly hydro and nuclear generation with running costs of less than $20MWh which stand to reap the greatest benefits from this proposal.

In addition, we are not persuaded that the $150 breakpoint will cause prices to cluster at that level during low and intermediate peak periods. We have freed the IOUs to self supply their needs. Between their nuclear units, hydro and their existing purchase power contracts, the three IOUs have nearly 25,000 MW available to supply their load during the low and intermediate periods. With this much capacity at their disposal, the IOUs will not be price takers for 25,000 MW of load.

Moreover, the flexibility of the IOUs to self supply their own needs renders the request for a load differentiated price cap a nullity. Most of the low and intermediate peak periods can be supplied by the IOUs through their own generation or

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[87] In PJM, the marginal cost bid cap applied only to sales from PJM generating units.

existing and future purchase power contracts. This obviates the need for a low price cap during these periods. In addition, there is a problem with imposing a low price cap for low load periods. If a peaking unit must be run during low load periods (for example due to outages of base and intermediate units), that unit would not be able to recover even its variable cost at the $65/MWh cap proposed by the ISO Board for load levels below 25,000 MW. As we noted earlier, this is a form of cost-based regulation which would jeopardize needed supply entry.

Another problem with the load differentiated price cap proposal is the indexing of gas prices at the NYMEX Henry Hub. Currently, there is a substantial difference in prices at the Henry Hub and at the California border. For instance, gas prices at the Henry Hub for December 4 were $6.50 while prices for that same date at Topock for deliveries to PG&E or Southern California Gas Company ranged from $16 to $18. Given this disparity we are not persuaded that changes in Henry Hub prices correlate to changes in prices in California. The load differentiated price caps are also based upon 1999 prices when market conditions were far better. As noted in the November 1 Order, the favorable factors (*e.g.*, abundant hydro and imports) that were present in 1999 disappeared in 2000. Calculating hypothetical heat rates from 1999 prices that include the dispatch of low cost energy that was not available in 2000 does not produce a reasonable result.

We also will not require sellers to offer fixed rate contracts for portions of their portfolio. Each seller's portfolio contains different types of generating assets

with different heat rates. A one size fits all fixed rate would not be practicable. In addition, we note that several sellers already have announced offers to supply large amounts of load to the three IOUs at fixed prices that are less than the average cost of generation for the IOUs in 1998.[88]

A number of commenters take exception to the Commission's assumptions in corroborating the $150 breakpoint. They argue that a more realistic heat rate is 7,500 Btu/kWh and NOx emissions of 0.1 lb/MWh, rather than the 10,000 Btu/kWh and 1.0 lb/MWh figures used in the November 1 Order. However, commenters miss the point of the Commission's calculations. The assumptions are based upon recovering the costs of existing gas fired generation in California while still allowing for a breakpoint that is high enough to allow new more efficient technology to invest in the market without triggering the reporting requirements. Commenters' assumptions are not realistic given the existing generator mix in California, and using their calculations for new generation as the basis for setting the breakpoint would push existing generation from the market. If the existing generation was as efficient as the assumptions used by the commenters opposed to the $150 breakpoint, NOx emission allowances would not be accounting for almost half of the variable cost of electricity.

While commenters have not provided convincing arguments to lower the breakpoint, neither have they provided convincing arguments to raise it.

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[88] According to WPTF at 24, the statewide average cost of generation in 1998 was $67.45/MWh.

However, it is apparent from the comments that we need to clarify the use of the $150 breakpoint. Commenters are incorrect that the $150 breakpoint is a cap. The $150 figure simply triggers reporting requirements to the Commission and monitoring and it will be limited to the ISO's markets and the PX Day-Ahead and Day-Of markets (through April 30, 2001). Parties may bid above the $150 breakpoint and we fully realize that sellers will bid above their marginal cost in times of scarcity. As we noted in the November 1 Order, we will not index the $150 to gas and NOx cost changes. We continue to believe that market entry is promoted by simplicity, transparency and stability in price. Indexing the breakpoint would add uncertainty to the market.

As previously noted, a number of commenters express concern with respect to the issue of justifying as-bid prices against opportunity costs. In recognition of the unworkable complexities that the opportunity cost concept introduces in the ISO real-time imbalance market, we will eliminate it. As Dynegy states (at 21) the major cash markets in the west (Palo Verde, California-Oregon Border and Mid-Columbia) close one hour before the California PX Day-Ahead market. This market in turn closes before the ISO ancillary service markets. Therefore, a seller's opportunity to sell in these other markets has already passed. This is particularly true with respect to the ISO real-time energy imbalance market.

In addition, we will not defer the January 1, 2001, implementation for the PX and ISO to run a single price auction below $150 and pay the as-bid price above that level. While the ISO and PX both

request additional time to implement software changes, the ISO admits that it can implement the as-bid requirement of the November 1 Order on January 1, 2001. We will direct the PX to put as-bid prices in its BFM Daily Block Market if this procedure is the quickest method to meet the January 1, 2001 deadline. We further direct the ISO, PX and other affected scheduling coordinators to work out the most expeditious way to calculate usage charges for congestion management.

4. Refund Period

The November 1 Order proposed to condition market-based rates on sellers remaining subject to potential refund liability through December 31, 2002 (approximately 27 months) in order to ensure just and reasonable rates during the period it takes to effectuate longer term remedies in the markets. Commenters assert that this condition exceeds the Commission's authority under section 206, which permits refunds for a period of 15 months after the refund effective date, and argue that by proposing this condition, the Commission attempts to do indirectly what it cannot do directly under the FPA.[89]

Dynegy, *et al.*, and Enron comment that the November 1 Order fails to identify any statutory basis for conditioning market-based rates, and Dynegy, *et al.*, cite several Federal court cases for the proposition that the Commission may not use its conditioning authority to circumvent a limitation on its ratemaking authority or to do anything

[89] *See, e.g.*, Williams at 16, XCEL Energy Services at 3, WPTF at 14, and Enron at 9.

specifically proscribed by statute.[90] PPL states that the Commission has made findings in each case granting market-based rate authority that sellers do not have the means to exercise market power, but has not made any findings here regarding any specific seller that would warrant reversing its earlier conclusions. PPL further contends that courts have required the Commission to limit the broad use of its conditioning power to situations where it has found wide-spread pervasive problems.[91]

The Commission rejects arguments that it may not condition continued approval of market-based rates on the seller agreeing to refund protection in circumstances where, absent such a condition, the Commission cannot find that market-based rate approval will result in just and reasonable rates and adequate protection of ratepayers. There is ample precedent that the Commission may place conditions on its approval of rates where outright approval would not yield just and reasonable results.[92] Courts recognize that imposing a condition can be preferable to the alternatives of rejection or unconditional acceptance.[93] In this order, we have

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[90] *See, e.g.*, Altamont Gas Transmission Co. v. FERC, 92 F.3d 1239, 1246 (D.C. Cir. 1996) (Altamont); Northern Natural Gas Co. v. FERC, 827 F.2d 779, 781 (en banc) (D.C. Cir. 1987) (Northern Natural); National Fuel Gas Supply Corp. v. FERC, 909 F.2d 1519, 1522 (D.C. Cir. 1990) (National Fuel Gas).

[91] PPL at 10, citing Associated Gas Distributors v. FERC, 824 F.2d 981 at 1019 (D.C. Cir. 1987) (Associated Gas).

[92] *See e.g.*, Central Iowa Power Cooperative v. FERC, 606 F.2d 1156 at 1168 (D.C. Cir. 1979).

[93] *See, e.g.*, Trans Alaska Pipeline Rate Cases, 436 U.S. 631 (1978). *See also* Tapoco, Inc., *et al.*, 39 F.E.R.C. ¶ 61,363 at

reaffirmed our earlier finding that current market conditions in California leave participants with the potential to exercise market power because of flawed market rules and tight supply conditions, which may lead to rates that are not just and reasonable. As we previously noted, the extended refund liability condition is to ensure just and reasonable rates until such time as the underlying factors are relieved. If sellers do not wish to accept the condition, they are free to seek cost-based rates. However, we do not believe this is the long-term solution that will best provide the consumers in California adequate supply of capacity at the lowest reasonable rate. Further, in light of the technical conference we are ordering to develop more "real-time" prevention of unjust and unreasonable rates, we anticipate that the refund condition may be of relatively short duration.

In response to commenters, we note that we are not imposing this condition on market-based rates pursuant to section 206(b), which provides for a 15-month refund period. While section 206 of the FPA clearly limits our authority to order refunds to the period 15 months following the refund effective date, it does not preclude us from imposing prospective conditions to ensure that future rates are just and reasonable. Indeed, the case law under the FPA requires us in the market rate context to establish a regulatory scheme that "acts as a monitor to see [that rates remain within a zone of reasonableness] or to check rates if it does not."[94] Here, we have instituted monitoring of market rates and, as a

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62,170-72 (1987); Yankee Atomic Electric Co., *et al.*, 40 F.E.R.C. ¶ 61,372 at 62,218-20 (1987).

[94] *Farmers Union*, 734 F.2d at 1509.

consumer protection backstop, we take action pursuant to section 206(a) to condition future approvals on a refund obligation in order to check rates until longer-term remedies are in place.

The cases cited by Dynegy, *et al.*, are inapposite. In these cases, the courts held that the Commission had improperly used its conditioning authority under section 7 of the Natural Gas Act to circumvent the procedural requirements of sections 4 and 5 of that Act (*Northern Natural* and *National Fuel Gas*), or to intrude upon state authority (*Atlamont*). Here, in contrast, we properly abide by FPA section 206's requirements in finding that the existing rates are unjust and unreasonable under certain market conditions and that we can ensure the justness and reasonableness of market-based rates in California's spot markets only by reserving the right to require refunds of charges collected until the end of 2002. Similarly, we reject PPL's argument that we exceed our authority to impose conditions. The prospective refund condition we impose here is carefully tailored to address specific market flaws identified in California's wholesale markets.[95] Our finding that the California market structure and rules provide the opportunity for sellers to exercise market power when supply is tight requires us either to reject or to condition the market-based rates of all sellers into the markets operated by the ISO and the PX for an interim period. We conclude that conditioning will

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[95] *Associated Gas*, to the contrary, found Commission action affecting the natural gas industry nationwide was inappropriate where the problem being addressed existed only in isolated pockets.

provide the best means of addressing the market dysfunctions in California.

5. Transaction Reporting Requirements

As we have noted earlier in this order, we will rely on several indicators for monitoring market power, including: the outage rates of the seller's resources, the failure to bid unsold MWs in the ISO's real-time market, and variations in bidding patterns for the same or similar resources.

We clarify that, unless the Commission issues some form of notification to a seller that its transaction is still under review,[96] refund potential on a particular transaction will close 60 days after the initial report is filed with the Commission. The institution of a 60-day period for the review of the transactions will provide sellers with the certainty they request and allows a reasonable period for analysis by staff.

In the November 1 Order, we proposed that all public utility sellers that make sales into the ISO and PX spot markets exceeding $150/MWH file certain transactional information with the Commission on a weekly basis. We also proposed in the Order that the PX and ISO report on a monthly basis all bids in excess of $150 to the Commission. We reaffirm these proposals as described in detail below.

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[96] Once Commission staff has identified transactions that warrant further review, the seller will be notified by a data request, Commission order, or other form of staff or Commission communication. If notification is issued, refund liability will continue until the review is terminated by issuance of a final staff letter or Commission order.

With respect to public utility sellers, they will be required to report confidentially in a single weekly filing all hourly transactions exceeding $150 to the Commission's Division of Energy Market.[97] Such weekly reporting should be submitted by the close of business on the Wednesday following the end of the transaction week (ending Sunday at midnight). For each hourly transaction above $150, the utility seller should provide the following information, in the order listed, in an Excel spreadsheet or comma-delimited electronic file. The seller should provide a single row for each transaction and furnish column headings for the data in the first row of the file, include the following data:

- transaction identification number (unique identifier for the bid)
- whether the transaction is into ISO or PX market (report ISO or PX)
- the name of the bidder
- transaction identification code as used by PX and ISO
- the generation unit including the identification code as used by PX and ISO
- the energy or ancillary service market
- transaction starting date (mm/dd/yyyy)
- transaction starting time (hh:mm)
- transaction ending date (mm/dd/yyyy)
- transaction ending time (hh:mm)

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[97] In our view, this reporting requirement and the requirement discussed above on long-term products do not appear to trigger the Paperwork Reduction Act. To avoid any uncertainty, however, we have submitted these requirements for emergency processing pursuant to 5 C.F.R. § 1320.13 (1999).

- the price of megawatts covered by the offer ($/MWh)
- megawatthours covered by the offer
- heat rate (btu/KWh)
- type of fuel (natural gas, oil, coal, and other)
- if not generated, the purchase price and the name of the supplier

The following list of data items should be included in the spreadsheet based on the megawatts in the transaction:

- total fuel quantity
- total fuel cost
- NOx emissions rate (lbs/MWh)
- cost of NOx emissions ($/MWh)
- other environmental compliance costs ($/MWh)
- variable O&M costs
- other costs (document separately)

In addition, the seller must provide:

- outage information for all of the seller's individual resources for the transaction period
- any unsold MWs which the individual seller has failed to bid into the PX or ISO spot markets during the transaction period
- all bids submitted into the PX or ISO spot markets during the transaction period

Moreover, the PX and ISO must make monthly confidential reports to the Director of the Commission's Energy Markets Division for all bids exceeding $150 for all public and non-public utilities. The initial report must be filed no later than February 15, 2001 for the period January 1, 2001

through January 31, 2001. All subsequent reports must be filed no later than 15 days after the end of each calendar month. The Commission staff will meet with representatives from the PX and ISO to finalize the reporting requirements.

F. Governance of the PX and ISO

1. Background

The November 1 Order found that the ISO Governing Board, unable to reach decisions on complex and divisive issues, had become ineffective. The order further noted concerns about the independence of the ISO and PX Boards, as they are comprised of stakeholders who are perceived as being susceptible to influence. Thus, the November 1 Order proposed that the current stakeholder boards be replaced with independent, non-stakeholder boards, effective 90 days after the date of the order. To facilitate a swift transition, the Commission proposed that each new board consist of 7 voting members, with the President/CEO of each entity as a voting member, and that the current Governing Boards of the ISO and PX select the other six members from slates of candidates prepared by an independent consultant. The order also provided guidance on the appropriate qualifications for the new Board members. At the subsequent conference on November 9, 2000, the Commission discussed with various state interests the need to collaborate on a mutually agreeable procedure to facilitate the seating of the new independent Boards.

2. Comments

There appears to be unanimous support among the parties for disbanding the current ISO

Governing Board and replacing it with a non-stakeholder board. However, numerous Parties argue that the State of California has a legitimate role in selecting successor board members and should not be excluded from the process.[98] The State's official position, as expressed by the Oversight Board, is for the Governor of California to appoint all members of the Boards, subject to confirmation by the California Senate. Governor Gray Davis avowed in his comments that he will propose legislation to replace the stakeholder Boards with independent Boards and requested the Commission's cooperation in the effort of establishing new ones, noting, "it will little serve the consumers, utilities, merchant generators or other parties to become embroiled in litigation over exactly what powers Congress conferred on the FERC in 1935 . . .." [99] Many parties propose compromise solutions for the selection process that include a role for the State.[100] Several others commenters believe that the Commission should proceed as proposed in the November 1 Order, or urge that California authorities not play a role in selecting new Board members because of excessive political pressure.[101]

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[98] *See* Oversight Board, California Commission, California Legislature, ISO, San Francisco, Southern Cities, SDG&E, CEERT, Metropolitan, and TANC. The ISO states that without changes to the state legislation, actions taken by the new Board may be challenged and requests more time to resolve the conflict in state and federal requirements.

[99] Gov. Davis at 6.

[100] *See, e.g.*, Metropolitan, TANC, TURN/UCAN, Southern Cities, CMUA.

[101] Reliant, Williams, Enron, Calpine, IEP.

The California Legislature urges the Commission to resolve these issues in a collaborative manner.

Fewer parties comment specifically about the Governing Board of the PX. Metropolitan recommends that the Commission not impose any particular governance structure on the PX, since it will be in the position of needing to compete with other power exchanges on an equal basis. The Center for Energy Efficiency and Renewable Technologies (CEERT) states that there is no basis for proposing any changes regarding governance of the PX because its Board has always acted cooperatively and productively. The PX's comments request that the Commission revise the time frame for implementing governance changes until 90 days after state/federal concerns have been resolved.

Other frequent comments include the need to ensure significant stakeholder input to the new non-stakeholder boards, through some type of stakeholder committee structure, and requiring that board meetings be subject to open meeting requirements. [102]

3. Commission Determination

While there is general agreement on the need to replace the existing stakeholder Boards, there is no consensus on the process for implementing the transition to an independent Board. State selection of all the board members is not a reasonable position in light of our prior determinations and the current procedures which only allow the state to veto

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[102] Metropolitan, TANC, City of San Diego, Southern Energy.

approximately half of the prospective candidates. However, the Commission believes that the state may have an appropriate role in board selection as long as the independence of the board members can be assured (*e.g.*, candidates were limited to the slate provided by the independent consultant). Thus, the Commission will require, as proposed in the November 1 Order, that the ISO Governing Board be replaced with a non-stakeholder Board, and that the members selected to serve on the new Board be independent of market participants. The ISO must continue the search process for new nonstakeholder board members. We also will establish further on-the-record procedures to discuss with state representatives the selection process for the new ISO Board. Because of the complex jurisdictional issues involved and the benefits of avoiding litigation, a specified period of additional time is warranted to attempt a mutually agreeable solution.[103] As the Commission has found it necessary to terminate the PX's rate tariff effective May 1, 2001, as discussed above, there is no need at this time to require replacement of its Governing Board.

Accordingly, on January 29, 2001, ISO Governing Board members must turn over decision-making power and operating control to the management of the ISO, but they will be permitted to continue

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[103] The Commission will issue a further order providing details for the discussions. If the parties are amenable, this process may also be used to reach State-Federal consensus on the role and structure of stakeholder advisors for the longer-term. We will permit other (non-State) parties in the proceeding the opportunity for input into and comment on the State-Federal discussions.

functioning as members of a stakeholder advisory committee.[104] If no consensus is reached regarding an acceptable means to select new ISO Board members within 90 days thereafter, then the procedures proposed in the November 1 Order will be carried out. Thus, the stakeholder advisory committee will provide input to ISO management until such time as a new Board is seated, or until April 27, 2001, whichever occurs sooner.

During this interim period, the advisory committee members' primary role will be to apprise ISO management of their respective stakeholder views on particular issues. Their role will be limited to providing the ISO with their suggestions on operations, policies and procedures, and providing other recommendations or information as requested by ISO management. Standing committees of the current ISO Board may continue to function by reporting to ISO management. As of January 29, 2001, the ISO Governing Board's bylaws will become null and void to the extent they are inconsistent with these duties.

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[104] We recognize concerns raised by the ISO and others that, without changes to State law, our directive to immediately change the status of the existing Board presents a conflict between State and Federal requirements. We conclude that it is necessary to take this step in order to remedy the dysfunctions in wholesale interstate electricity markets in California and to assure just and reasonable rates. Our hope, however, is to reach a mutually agreeable State/Federal consensus on how the new Board is to be selected and to eliminate conflicts between State and Federal requirements as expeditiously as possible.

G. Other Factors Requiring Immediate Action

The California Commission has raised a number of arguments. As discussed below, we conclude that only one - monitoring of outages - requires immediate action.

The California Commission argues that we should impose price caps and delay our market reform in order to continue investigating the events of the summer of 2000. Price caps will stifle needed supply entry. In addition, California does not have the luxury of unlimited time to study these markets prior to instituting needed immediate market reforms. As noted by the California Commission, the Staff Report acknowledges that because of the expedited basis of the study, staff was not able to address all of the issues in depth and that the intent of the report is to provide the big picture. However, the big picture is abundantly clear that market forces along with the existing market rules played a large part in the increase in prices in California this summer. The California Commission downplays the effects of market forces on price and uses certain discrete findings of the Staff Report to argue that more analysis is needed to determine if sellers exercised market power. For example, the California Commission cites the Staff Report's finding that peak demands during the summer of 2000 were lower than peak demands during the summer of 1999 and that this finding would suggest that higher demands cannot account for the higher prices.

While monthly system peak demands were lower in the summer of 2000 from the previous year, average demand was up 8 to 9 percent over that

period. This increase in load caused more fossil generation to run for longer periods of time. In addition, while more energy was being consumed in the California markets, imports, as noted in the Staff Report, were lower from the previous year while exports increased significantly from the same period.

The California Commission criticizes our analysis arguing that the increase in natural gas and NOx costs alone do not fully explain the increase in prices seen in the PX this summer. However, the California Commission's own data, adjusted for the increase in natural gas and NOx costs, show that marginal costs doubled in June 2000 from the previous year and nearly tripled in September 2000 from the previous year.[105] This increase in marginal costs occurred when the output from hydro resources was significantly lower than 1999 levels.[106] With less hydro resources available than the previous year, fossil-fired generation that would have been uneconomical to run in 1999 was needed to make up the shortfall. Much of this older generation has higher heat rates than the assumed 10,000 Btu/MWh value used in the California Commission's example. Thus, higher cost units are setting the market clearing price. As correctly noted in the Staff Report and the November 1 Order, a number of factors working together caused prices to rise.[107] Most troubling is the California Commission's

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[105] California Commission Exhibit at 17.

[106] The Staff Report indicates that non-hydro resources generated 24.9 percent more power in June 2000 than the previous year. Staff report at 2-2.

[107] 93 F.E.R.C. at 61,359.

unsupported assertion that NOx costs will decrease next year. This assertion is inconsistent with the fact that increased gas generation is planned and NOx allowances are shrinking.

The California Commission is also critical that we have not sufficiently investigated the increased outage rate of generating units. As previously noted, the Staff report was an informal investigation and that in some instances, the Staff did not have the time to conduct detailed analyses of certain anomalies such as after the fact investigation and verification of plant outages. That said, we agree that timely verification of outages is critical. In this period of tight supply, generation outages whether forced or planned have substantial reliability and price implications. It makes little sense to expect the ISO to operate a reliable transmission system without some assurance and verification that needed generation is available. The ISO has instituted a program of on-the-spot physical inspections of generation stations to verify that the outages are legitimate. Our staff and the California Commission staff are also performing these inspections. We think that timely visual inspection is far preferable to an after-the fact review. We also will direct our staff to perform its own inspections.[108]

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[108] Other misplaced criticisms of the Staff Report are that (1) the report said that conclusions about potential market power in August were unclear (staff's report was issued before much of the August data were available); (2) the report proposes that the Commission abandon any effort to evaluate withholding behavior (the report did not argue that the effort should be abandoned); (3) the report mistakenly concludes that, between 1999 and 2000, changes in net imports were due to

H. Interconnection Procedures

1. Background

The November 1 Order noted that standard procedures to facilitate the interconnection of new generators or existing generators seeking to increase the rated capacity of their facilities are needed in California. In that regard, we found that the ISO tariff lacks any such procedures and we directed the ISO to file generation interconnection procedures no later than sixty (60) days after the Independent Board is seated. Further, we stated that our proposed timeline would ensure that the Commission may facilitate the matters under its control in a timely manner. [109]

2. Comments

The majority of commenters support the establishment of standard interconnection procedures (IPs) in the ISO Tariff. For example, the California Commission believes that the establishment of such IPs is a useful activity to promote ease of entry of needed new generation in

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increases in exports rather than reductions in imports (the report correctly notes that imports were down and exports were up significantly); (4) the report understated the amount of generation available by understating unit capacity (the report was based on actual operating limits in effect during this period, not the maximum capacity ratings generally used for planning purposes; (5) the California Commission's estimate of summer marginal generation costs, based on an extrapolation of summer 1999 prices and changing input prices, differ from data adopted in the report, which was based on the running costs for typical units (credible estimates require simulation studies like those prepared by the MSC).

[109] *See* November 1 Order, 93 F.E.R.C. at 61,364-65.

the state, the Department of Energy states that interconnection standards will help remove barriers to technologies which could enhance reliability and reduce price volatility, and TURN/UCAN "wholeheartedly" agrees that standard procedures for new generator interconnection are a high priority. In like manner, the ISO agrees that IPs are critical to the stimulation of efficient generator supply additions, and it commits to file a comprehensive interconnection policy with the Commission by no later than April 2, 2001. The ISO seeks clarification as to its ability, if it is able to do so, to make that filing in advance of any consideration by the ISO Board.[110]

Certain commenters, however, express concern regarding the establishment of IPs. PG&E proposes that the timeline for filing of the IPs be extended to 120 days since the new Board members will have little time to consider the merits of such a proposal. Enron asserts that the IPs should encourage new generation siting and send accurate price signals. Calpine argues that the Commission should direct the ISO to propose IPs consistent with the policies already articulated in previous Commission orders.[111]

3. Commission Determination

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[110] *See*, respectively, California Commission at 61; Department of Energy at 5; TURN/UCAN at 12-13; and ISO at 24-25. *See also* AF&PA at 4-5; City of San Diego at 29; EPSA at 12; MG at 16; NEM at 5; and SMUD at 29-30.

[111] *See*, respectively, PG&E at 46-47; Enron at 23-24; and Calpine at 18.

We affirm our finding that the ISO must file standard IPs with the Commission, with one modification as discussed below. As we indicated in the November 1 Order, and as commenters cogently note, such procedures will facilitate the addition of new - as well as the expansion of existing - generation in the state, which will in turn enhance system reliability and reduce price volatility. No commenter disputes this fact.

Further, we agree with Calpine's argument and, accordingly, we hereby place the ISO on notice that we expect its proposed IPs to comport with the policy and precedent already established by the Commission for such filings.[112] Simply put, we do not believe that the structural conditions in California are unique in any significant respect and we see no reason for the ISO's proposal to incorporate any terms or conditions which deviate from those in IPs we have accepted in the past.[113]

Moreover, as discussed elsewhere in this order, the members of the ISO Board will as of January 29,

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[112] In particular, we direct the ISO to develop streamlined IPs regarding requests for interconnection of generation units smaller than a certain threshold size. See Southwest Power Pool, Inc., 92 F.E.R.C. ¶ 61,109 at 61,401, n.5 (2000) (SPP).

[113] *See, e.g.*, Commonwealth Edison Co., 91 F.E.R.C. ¶ 61,083 (2000), *order on compliance filing*, 92 F.E.R.C. ¶ 61,018 (2000); Entergy Services, Inc., 91 F.E.R.C. ¶ 61,149 (2000); American Electric Power Service Corporation, 91 F.E.R.C. ¶ 61,308 (2000); and SPP. Further, to the extent that our determination on this matter will simplify development of the ISO's proposal, and in light of our above discussion regarding the ISO Board, we find PG&E's concern regarding time limitations to be without merit. Thus, we deny PG&E's request to extend the ISO's filing deadline.

2001, serve only in an advisory capacity to the ISO's management. Consequently, the ISO will not need the Board's approval before filing its proposed IPs with the Commission.[114]

Finally, upon consideration of the events of the past Summer, we are concerned that requiring only the ISO to file IPs may result in uncertainty regarding interconnection of generation to transmission facilities that are under the control of one of the three California IOUs. In particular, we believe that were we not also to require the IOUs to file such procedures with the Commission, confusion may arise as to the ability of the ISO to require such connections if needed, in turn delaying needed contributions of new or expanded generation capacity to the stability of the grid. Consequently, we will take this opportunity to direct the IOUs to each file with the Commission IPs that are compatible with those developed by the ISO and to do so within the same timeline we have provided for the ISO (*i.e.*, no later than April 2, 2001). The number of IP's that have been filed with the Commission should provide significant guidance for the IOUs and assist them in making timely filings – to the extent that the IOUs have unique system requirements in their individual filings.

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[114] However, in light of our findings regarding the ISO Board, we will modify the deadline stated in our November 1 Order so that the ISO now must file its proposed IPs no later than April 2, 2001 (rather than 60 days after a new Board is seated).

I. Longer-Term Measures

1. Background

The November 1 Order indicated our belief that the current structure in California requires a number of longer-term reforms in addition to the immediate measures discussed previously. Further, while we stated that we were not dictating any particular revision, we instituted the following longer-term measures: (1) directing the ISO and the Load Serving Entities in California to consider what market rules are needed to ensure that sufficient supply is available to meet loads and reserve requirements; (2) directing the PX and the ISO to consider, during the 24-month transition period window, whether alternatives to the single price auction which minimize the ability of sellers to bid for the purpose of setting the clearing price may be appropriate; (3) directing the ISO and the PX to pursue establishing an integrated day-ahead market in which all demand and supply bids are addressed in one venue; (4) directing the ISO and the PX to consider less intrusive, narrowly tailored market protection mechanisms (*e.g.*, ex ante identification of conditions or behavior that would trigger specific market mitigation actions); (5) directing the new ISO Board to file its congestion management redesign proposal no later than sixty (60) days after the Board is seated with an implementation date as soon as possible, and requiring that the proposal provide a comparison with a nodal energy price proposal (*i.e.*, locational marginal prices for each bus or node on the grid); and (6) directing the ISO and Scheduling Coordinators to consider demand bidding programs in which loads can bid offers of demand reduction

directly into the market to compete with offers of supply. In addition, we stated our expectation that the matters addressed in the November 1 Order will move the California market toward meeting the significant objectives of Order No. 2000 and that the preceding long-term market reforms will facilitate California's transformation into a properly sized and functioning RTO.[115]

2. Comments

A large number of commenters express their support for the long-term measures proposed in the November 1 Order, although most of the comments in this regard also include requests that the Commission either provide more explicit direction or, conversely, that we refrain from being overly prescriptive in our direction. For instance, the Oversight Board contends that the Commission's proposal regarding an integrated day-ahead market is ambiguous and should be clarified to provide a much clearer statement of direction,[116] but it also believes that the appropriate size and scope of a California-based RTO is separate from the fundamental questions before the Commission in this proceeding and, consequently, need not be decided herein. Other comments generally focus on one or more of the following categories: (1) the specific type of congestion management design to be utilized by the ISO (*e.g.*, the ISO should be required to adopt a congestion management design based on locational marginal pricing rather than zonal

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[115] *See* November 1 Order, 93 F.E.R.C. at 61,365-66.

[116] *See* Oversight Board at 19.

pricing);[117] (2) the specific types of demand response programs to be utilized by the ISO (*e.g.*, the ISO should be required to designate curtailable load as an ancillary service);[118] and (3) the formation of a WSCC-wide RTO and the requirement that the ISO to join such an entity.[119]

On a more specific level, San Francisco complains that the November 1 Order's 60-day filing requirement deadline for the congestion management reform proposal [120] may not be adequate given the significant gaps in design and analysis of the proposals presented to stakeholders to date. Further, San Francisco argues that the 60-day deadline may force the ISO's staff to recommend an inadequate proposal or one which has been completed but is poorly understood because there has been insufficient opportunity for analysis. San Francisco recommends that 60-day deadline be modified in two respects: (1) a fully designed and described congestion management redesign proposal and a cost impact study of that proposal should be

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[117] *See, e.g.*, Cities/M-S-R at 3-4; City of Seattle at 5-6; CMUA at 7; Dynegy at 40-43; Elcon, et al., at 16-17; Exelon at 9; ISO at 21-24; FTC at 7, n.17; NEM at 8; NYMEX at 11; SDG&E at 28 and 33-34; TURN/UCAN at 14-15; and San Francisco at 8-10.

[118] *See, e.g.*, ACWA at 3-5; APX at 3; BP Energy at 12-13; DWR at 5-9; Elcon, *et al.*, at 13-14; ISO at 25-26; Metropolitan at 17-19; MG at 6-8 and 17-18; NEM at 7; New West at 2-3; Puget Sound at 10-12; SMA at 7-8; and TURN/UCAN at 15.

[119] *See e.g.*, AF&PA at 4; BP Energy at 14-15; Calpine at 17-18; Cities/M-S-R at 4-5; Elcon, *et al.*, at 14-16; FTC at 12; MG at 4-5 and 18; NEM at 8-9; TANC at 9-12; and TURN/UCAN at 15-16.

[120] *See* November 1 Order, 93 F.E.R.C. at 61,365-66.

presented to stakeholders in sufficient time to allow them to understand the proposal and to prepare meaningful commentary to the ISO Board; and (2) the 60-day deadline should begin once a meeting of newly-seated Board members is presented with a staff presentation, the results of a cost impact study, and the receipt of public comment (along with sufficient time to consider such comment). Similarly, Metropolitan expresses concern that the newly-seated ISO Board will have insufficient time to review the ISO's proposal, and it requests that the filing requirement deadline be extended to 120 days.[121]

3. Commission Determination

Although we appreciate the concerns raised by commenters with respect to the possible need for further guidance, we will decline at this time to issue more prescriptive direction for our long-term measures than that already stated in our November 1 Order. We have carefully weighed the pros and cons of providing any such direction with the need to ensure that the ISO presents us with a proposal or series of proposals that provide a synergy of effort and that result in the most workable and efficient market possible. On balance, we are concerned that any prescriptive direction we would issue could not possibly account for the myriad facets of the ISO's restructuring effort, thus such direction would merely serve as an impediment to those efforts and would delay–and/or significantly diminish the quality–of the ISO's final market

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[121] *See*, respectively, San Francisco at 10-11; Metropolitan at 15-16.

design. Moreover, not issuing such direction at this time will allow *all* interested parties the opportunity to provide more specific and focused commentary once the relevant proposals are filed with the Commission.

In addition, we decline to prejudge the ability of the ISO's staff to develop a comprehensive and well-thought congestion management redesign proposal. The ISO has not requested an extension of time to file that proposal and we will not create one only on the basis of commenter's remarks. Further, as discussed elsewhere in this order, the members of the ISO Board will as of January 29, 2001, serve only in an advisory capacity to the ISO's management and may file comments on the ISO's proposal once it has been submitted to the Commission. Accordingly, we deny San Francisco's and Metropolitan's requested modifications.

While we decline to prescribe particular long-term market reforms at this time, we wish to establish a forum for their resolution. We therefore direct our staff to convene a technical conference to explore the best long-term measures to address California's wholesale markets. We direct that this conference include the issues of: (1) the adoption of security-constrained unit commitment dispatch; (2) the use of simultaneous rather than sequential auctions; (3) the creation of an installed capacity market; (4) the establishment of reserve requirements; and (5) demand-side response programs. We will issue a subsequent order on these matters at a later date.

We will make two other modifications to our proposed longer-term measures. First, insofar as we have terminated the PX's wholesale tariff and rate schedules elsewhere in this order effective May 1, 2001, we will no longer require the PX to institute any applicable longer-term measure. Second, the Commission directed the ISO to undertake a comprehensive redesign of its congestion management process. In response, the ISO began the process in March 2000 with numerous working group and individual market participant meetings. By September 2000, a revised congestion management process was submitted to the ISO Board for approval. The ISO Board approved the creation of eleven Locational Pricing Areas (LPAs). LPAs are based upon engineering requirements, criteria and practices that guide real-time operation to ensure grid reliability. The ISO predicts that this new program will effectively manage most, if not all congestion in California based upon a comparison to full nodal pricing. We direct the ISO to file the redesign proposal. In light of our findings regarding the ISO Board, we will modify the deadline stated in our November 1 Order so that the ISO now must file its congestion management redesign proposal no later than January 31, 2001 (rather than 60 days after a new Board is seated).

For the above reasons, we affirm the November 1 Order's proposed longer-term measures, with the modifications as discussed above.

J. Other Matters

1. Qualifying Facility (QF) Issues

A. Increased Output from QF Facilities

Ridgewood states that the total power production capacity of QFs in California is approximately 9,000 MWs, of which, between 4,000 and 5,500 MW are from qualifying cogeneration facilities (Cogeneration QFs) and the remainder from small power production facilities (Small Power QFs). Ridgewood states that the Cogeneration segment of the industry is underutilized because of operating efficiency and other QF requirements.[122] With a limited waiver or other equivalent relief, these underutilized resources could help relieve current shortages during both peak and off-peak period. Ridgewood estimates that as much as 1,000 MWs would be immediately available by allowing QFs to sell to the purchasing utility or into the competitive market their "above-baseline" output for a limited time period. [123] Ridgewood suggests that any such sale would be made at market-based rates and would not be subject to the operating and efficiency standards. Rigdewood cites *Fresno Cogeneration Partners, L.P.*, 92 FERC ¶ 61,230 (2000) (*Fresno Cogen*), stating that the Commission has granted waivers to Cogeneration QFs that entered into restructuring

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[122] These requirements contain formulas that tie any increases in the total energy output and total power input of a facility to corresponding increases in the thermal energy output. 18 C.F.R. § 292.205 (2000).

[123] Ridgewood suggests that the baseline output for each facility be calculated using the seasonal averages of output over two to three years of recent operating history. Ridgewood at 9.

arrangements with their purchasing utilities and should allow the same flexibility to all Cogeneration QFs in the California market.

Ridgewood also states that similar efficiencies could be gained from relaxing the restrictions on Small Power QFs in California. The use of oil, natural gas, or coal by any Small Power QF is limited under PURPA unless waiver is granted.[124] Ridgewood suggests that such a waiver, along with action on the Cogeneration QF efficiency standards would provide the largest benefit to California consumers.

The Commission considered these comments in an order issued on December 8, 2000, granting emergency waiver of certain QF regulations through January 1, 2001.[125] For the reasons cited in that order, we will extend the waiver of 18 C.F.R. §§ 292.204 and 292.205 through April 30, 2001.

B. PX based Pricing for QF Contracts

Cogeneration Association and Calpine express concern about the pricing of power sold from their QF units under long-term contracts with California IOUs. Cogeneration Association states that California Public Utilities Code, Section 390(c) ties the Cogeneration QF energy price to the PX price. These resources, which are bid into the California PX market at zero, are thus price takers and will receive the PX Day-Ahead energy price as an hourly energy payment. Calpine states that because its

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[124] 18 C.F.R. § 292.204(b) (2000).

[125] *San Diego Gas & Electric Company, et al.*, 93 F.E.R.C. ¶ 61,238 (2000).

units have heat rates that vary from 10,000 to 13,000 BTU/KWh, at times of high gas prices these units will substantially exceed the $150/MWh breakpoint. Calpine states moreover that there is no mechanism under the current rate structure to allow Calpine to bid the actual cost of these units to the extent that the cost exceeds the $150/MWh level. Therefore, these units may not run if their current rates are not modified.[126]

Calpine and Cogeneration Association have raised legitimate concerns regarding the pricing and associated availability of Cogeneration QF resources in the California market. However, as stated by Cogeneration Association, this issue derives from the California Public Utility Code and in the first instance is within state authority. In this order, we eliminate the PX buy/sell requirement and terminate the PX rate schedule. These changes to the California market structure require necessary actions by California authorities in order to determine the appropriate avoided cost rate for Cogeneration QF power, a determination, as stated by PURPA, within the purview of the states.

2. Requests for Regional Price Cap

Despite the fact that the November 1 Order did not address this matter, five commenters request that the Commission impose a price cap–or some other California-based market mitigation mechanism–on the entire Western region. In support, the commenters observe that the November 1 Order recognized that California is not electrically

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[126] Calpine at 14. Cogeneration Association at 14.

isolated from the remainder of the Western Region and that, over time, California utilities have increasingly relied on imports from generation located in neighboring states to meet their load requirements and have constructed significant transmission interties to import electricity for California consumers. Conversely, CE Generation LLC argues that a regional pricing mechanism would be unjust and unreasonable insofar as there is no evidence in the record that utilities outside of California have caused the rates for service to become unjust or unreasonable, nor is there any evidence that would justify a finding that the rates of any utility outside of California are unjust and unreasonable.[127]

Although we agree with the commenters that the Western region of the U.S. is an integrated electricity market,[128] we will decline to adopt a region-wide price cap at this time. There are no organized electricity markets outside of California to which a price cap could be applied, *i.e.*, with the exception of California, there are no ISO or PX markets currently operating anywhere in the region.

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[127] *See* California Legislature at 10; County of San Diego at 22-24; Metropolitan at 12; Oversight Board at 24-26; and Puget Sound at 9-10 (reiterating its arguments on complaint as discussed elsewhere in this order). *See also* CE Generation at 10-11.

[128] *See* November 1 Order, 93 F.E.R.C. at 61,357-58, for a detailed discussion of the integrated nature of the Western region markets.

The majority of transactions that occur in the region do so on a bilateral basis.[129]

Moreover, under the Federal Power Act, upon complaint or on our own motion, the Commission may establish new rates only if it first has a record to determine that the existing rates are unjust, unreasonable, unduly discriminatory or preferential. Further, once such a finding is made as to existing rates, the Commission must have a record to support the new rate it establishes as just and reasonable. The record in this consolidated hearing proceeding only extends to sales into the ISO and PX markets; thus, the Commission has little or no evidence on which to assess prices of bilateral transactions either within California or elsewhere in the Western region. While the issue of generation supply availability in California is an important one, no commenter has submitted evidence that conclusively demonstrates that the adoption of regional price cap would beneficially influence the availability of supplies in California. In addition, no commenter has documented a single instance of a seller outside of California exercising market power during times of scarcity. In sum, the commenters have not met the burden of showing that a price cap on all sellers supplying energy and ancillary services in the Western region is justified and in the public interest.

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[129] *E.g.*, bilateral contracts often contain provisions which index damages for non- performance to certain index prices (*i.e.*, so-called "mark-to-market" provisions). Thus, the imposition of a regional price cap could potentially result in an alteration of the existing terms and conditions of a myriad of bilateral contracts, resulting in an undue burden for all concerned.

K. Related Complaints and Other Filings

Consistent with our discussion in this order, we will reject the various proposals and complaints regarding the imposition of price caps or cost-based rates – *i.e.*, the Oversight Board's complaint in Docket No. EL00-104-000, CMUA's complaint in Docket No. EL01-1-000, the ISO's Offer of Settlement in Docket No. EL00-95-003, *et al.*, and Puget's complaint in Docket No. EL01-10-000. The modifications we are establishing in this order are intended to provide for uniform pricing and to remove incentives for the load and resources to participate in one market over another. For this reason, we decline to direct the implementation of pricing methodologies that will disrupt this uniformity or to introduce new incentives in the markets. Furthermore, in the case of Puget Sound's complaint, and as also consistent with our discussion elsewhere in this order, we decline to implement a region-wide price cap because such a pricing methodology is impracticable given the market structure in the Northwest, nor has the burden of proof been met to justify such an action.

Moreover, we reject Joint Complainants' complaint filed in Docket No. EL00-97-000 for several reasons. First, in light of the findings made by the Commission in this order, Joint Complainants' assertions regarding the adverse impacts of a reduced price cap are no longer relevant. We believe that as a result of the pricing methodology adopted in this order, generators should no longer have incentive to seek markets other than those in California. Second, the precedent established in *Morgan Stanley* is simply not

applicable in this instance since it does not address – nor was it intended to address–the issue of curtailments for the maintenance of system reliability. Third, contrary to Joint Complainants' contention, the ISO Tariff does in fact contain a compensation mechanism for curtailments of exports. That mechanism was accepted by the Commission as part of the ISO' Tariff Amendment No. 23[130] and, to the extent Joint Complainants' complaint challenges the relevant Commission-approved Tariff provisions, we reject their arguments as a collateral attack on our previous orders.

With respect to CARE's complaint filed in Docket No. EL01-2-000, we will deny CARE's petitions regarding California market conditions as well as its petitions regarding the initiation of DOJ investigations. Simply put, CARE has failed to meet its burden of proof inasmuch as did not provide adequate evidence in support of its allegation of an ISO/generator trust, nor did it document a single instance of restraint of trade or civil rights violations. In any event, the matter of whether the alleged violations warrant the initiation of DOJ investigation is clearly not within the Commission's jurisdiction.

We will accept without modification the ISO's proposed Tariff Amendment No. 30 filed in Docket Nos. EL00-95-002 and EL00-98-002, and we will grant the effective date requested by the ISO.

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[130] *See California Independent System Operator Corp.*, 90 F.E.R.C. ¶ 61,006 (2000), *reh'g denied*, 91 F.E.R.C. ¶ 61,026 (2000), order on compliance filing, 90 F.E.R.C. ¶ 61,165 (2000).

Regarding intervenors' concerns that the ISO be limited in its use of forward contracting, we believe that the findings made in this order, particularly those intended to significantly reduce underscheduling, will serve that purpose. To the extent that the ISO's need to procure energy for the real-time market will be significantly reduced, its need to procure energy through forward contracting will be lessened accordingly. In addition, with respect to the issue of the ISO's proposed allocation methodology, we find intervenors' arguments on this matter to be without merit. The proposed methodology merely allocates costs in a manner consistent with other such methodologies that we have accepted in the past, [131] and no party has presented arguments which persuade us to reject it.

The Commission orders:

(A) We hereby terminate the PX's rate schedules effective as of the close of the April 30, 2001, trading day.

(B) We hereby terminate the authority of PG&E, SoCal Edison, and SDG&E to sell their resources into the PX effective as of the date of this order. The companies are hereby directed to submit compliance filings effecting this change within 15 days of the date of this order.

(C) The ISO and PX are hereby directed to submit compliance filings as discussed in the body of this order within 15 days of the date of this order.

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[131] *See, e.g., California Independent System Operator Corporation*, 91 F.E.R.C. ¶ 61,256 (2000), *reh'g pending*.

(D) The bylaws of the ISO are hereby declared to be null and void effective as of January 29, 2001, as discussed in the body of this order.

(E) We hereby direct the ISO, PX, and all public utility sellers that make sales into the ISO and PX spot markets to file information regarding certain transactions and bids, as discussed in the body of this order.

(F) We hereby direct the ISO, PG&E, SoCal Edison, and SDG&E to file Interconnection Procedures no later than April 1, 2001.

(G) The Commission staff is hereby directed to convene a technical conference to develop monitoring and mitigation program, as discussed in the body of this order, and is directed to submit a proposed monitoring plan no later than March 1, 2001.

(H) The ISO is hereby directed to file a congestion management redesign proposal no later than January 31, 2001.

(I) We hereby grant waiver of 18 C.F.R. §§ 292.204 and 292.205, as discussed in the body of this order.

(J) We hereby accept for filing the ISO's Tariff amendments filed in Docket Nos. EL00-95-002 and EL00-98-002.

(K) We hereby dismiss the complaints filed in Docket Nos. EL00-97-000, EL00-104-000, EL01-1-000, EL01-2-000, and EL01-10-000.

By the Commission. Chairman Hoecker concurred with a separate statement to be issued later.

(SEAL) Commissioners Massey and Hébert concurred with separate statements attached.

s/ David P. Boergers
David P. Boergers,
Secretary.

Appendix A - Intervenors and Respondents

Intervenors to Consolidated Hearing Proceeding in Docket No. EL00-95-000, et al.

AES NewEnergy, Inc. *
AES Pacific, Inc.
Alcoa Inc., Columbia Falls Aluminum Company, and Kaiser Aluminum & Chemical Corporation (jointly) *
American Association of Business Persons with Disabilities
American Forest & Paper Association * (AF&PA)
Arizona Districts
Arizona Residential Utility Consumer Office, New Mexico Attorney General, and the Colorado Office of Consumer Counsel (jointly) *
Atofina Chemicals, Inc., Goldendale Aluminum Company, and Northwest Aluminum Company (jointly) *

Automated Power Exchange, Inc. * (APX)
Bonneville Power Administration* (Bonneville)
BP Energy Company * (BP Energy)
California Department of Water Resources * (DWR)
California Electricity Oversight Board * (Oversight Board)
California Hydropower Reform Coalition and Environment Defense (jointly)
California Independent System Operator Corporation * (ISO)
California Manufacturers and Technology Association
California Municipal Utilities Association * (CMUA)
California Power Exchange Corporation * (PX)
California Small Business Association and California Small Business
Roundtable (jointly) *
Calpine Corporation * (Calpine)
CE Generation LLC * (CE Generation)
Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (jointly) *
(Southern Cities)
Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power
Agency (jointly) * (Cities/M-S-R)
City and County of San Francisco, California * (San Francisco)
City of Dana Point, California
City of Escondido, California
City of Poway, California
City of San Diego, California * (City of San Diego)
City of Seattle, Washington * (City of Seattle)
City of Vernon, California (City of Vernon)
City of Vista, California

County of San Diego, California (County of San Diego) *
Cogeneration Association of California and Energy Producers and Users
Coalition (jointly) * (CAC/EPUC)
Constellation Power Source, Inc.
Consumers First
Coral Power, L.L.C.
Duke Energy North America LLC, Duke Energy Trading and Marketing, LLC,
and Duke Energy Merchants, LLC (jointly) * (Duke)
Dynegy Power Marketing, Inc., El Secunda Power, LLC, Long Beach Generation LLC,
Cabrillo Power I LLC, and Cabrillo Power II LLC (jointly) * (Dynegy, et al.)
El Paso Merchant Energy, L.P. (El Paso)
Electricity Consumers Resource Council, American Iron and Steel Institute, and
American Chemistry Council (jointly) * (Elcon, et al.)
Electric Power Supply Association * (EPSA)
Enron Power Marketing, Inc., and Enron Energy Services, Inc. (jointly) * (Enron)
Exelon Corporation * (Exelon)
FPL Energy, LLC *
H.Q. Energy Services (U.S.), Inc.
Independent Energy Producers Association * (IEP)
Industrial Customers of Northwest Utilities *
Internal Services Department of Los Angeles County
Merced Irrigation District
Merrill Lynch Capital Services, Inc.
Metropolitan Water District of Southern California * (Metropolitan)
MG Industries * (MG)
Modesto Irrigation District * (Modesto)
Morgan Stanley Capital Group Inc.

Mr. Mark B. Lively
Multiple Intervenors *
New West Energy Corporation * (New West)
New York Independent System Operator, Inc.
New York Mercantile Exchange * (NYMEX)
North Star Steel Company *
Northern California Power Agency * (NCPA)
NRG Power Marketing, Inc.
Orion Power New York, Inc.
Pacific Gas and Electric Company * (PG&E)
PacifiCorp *
Pinnacle West Companies (Pinnacle)
PJM Industrial Customer Coalition and Coalition of Midwest Transmission Customers (jointly) *
Portland General Electric Company
PPL EnergyPlus, LLC and PPL Montana, LLC (jointly) * (PPL)
Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC, and PSEG Power LLC (jointly) *
Public Utilities Commission of California * (California Commission)
Puget Sound Energy, Inc. * (Puget Sound)
Reliant Energy Power Generation, Inc. * (Reliant)
Ridgewood Power LLC * (Ridgewood)
Sacramento Municipal Utility District * (SMUD)
San Diego Gas & Electric Company * (SDG&E)
Secretary of the U.S. Department of Energy * (Department of Energy)
Shell Energy Services Company, L.L.C. *
Southern California Edison Company * (SoCal Edison)
Southern Energy California, L.L.C., Southern Energy Delta, L.L.C., and Southern

Energy Potrero, L.L.C. (jointly) * (Southern Energy)
The Utility Reform Network * (TURN)
Transmission Agency of Northern California * (TANC)
Watson Cogeneration Company *
Western Power Trading Forum * (WPTF)
Williams Energy Marketing & Trading Company * (Williams)

* - indicates that party also submitted comments in response to the Commission's November 1 Order.

Intervenors and Respondents to Complaint in Docket No. EL00-97-000

California Department of Water Resources
California Electricity Oversight Board
California Independent System Operator Corporation
California Manufacturers and Technology Association
California Power Exchange Corporation
Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency (jointly)
Duke Energy North America LLC, Duke Energy Trading and Marketing, LLC, and Duke Energy Merchants, LLC (jointly)
Electric Power Supply Association
Metropolitan Water District of Southern California
Modesto Irrigation District
Morgan Stanley Capital Group Inc.
New York Mercantile Exchange

Northern California Power Agency
Pacific Gas & Electric Company
Portland General Electric Company
Public Utilities Commission of the State of California
Sacramento Municipal Utility District
San Diego Gas & Electric Company
Southern California Edison Company
Transmission Agency of Northern California
Williams Energy Marketing & Trading Company

Intervenors and Respondents to Complaint in Docket No. EL00-104-000

Bonneville Power Administration
California Department of Water Resources
California Independent System Operator Corporation
California Municipal Utilities Association
California Power Exchange Corporation
Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (jointly)
Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency (jointly)
City of Vernon, California
Cogeneration Association of California and the Energy Producers and Users Coalition (jointly)
Duke Energy North America LLC, Duke Energy Trading and Marketing, LLC, and Duke Energy Merchants, LLC (jointly)
El Paso Merchant Energy, L.P.
Electric Power Supply Association

Enron Power Marketing, Inc., and Enron Energy Services, Inc. (jointly)
Independent Energy Producers Association
Merrill Lynch Capital Services, Inc.
Modesto Irrigation District
Morgan Stanley Capital Group Inc.
New York Mercantile Exchange
Northern California Power Agency
Pacific Gas and Electric Company
Pinnacle West Companies
Public Utilities Commission of the State of California
Reliant Energy Power Generation, Inc., and Reliant Energy Services, Inc. (jointly)
Sacramento Municipal Utility District
San Diego Gas & Electric Company
Southern California Edison Company
Southern Energy California, L.L.C., Southern Energy Delta, L.L.C., and Southern Energy Potrero, L.L.C. (jointly)
Transmission Agency of Northern California
Western Area Power Administration
Western Power Trading Forum
Williams Energy Marketing & Trading Company

Intervenors and Respondents to Complaint in Docket No. EL01-1-000

AES NY, L.L.C.
American Public Power Association
Bonneville Power Administration
California Department of Water Resources
California Electricity Oversight Board

California Independent System Operator Corporation
California Large Energy Consumers Association
California Manufacturers and Technology Association
California Power Exchange Corporation
Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (jointly)
Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency (jointly)
City of San Diego, California
City and County of San Francisco, California
Cogeneration Association of California and the Energy Producers and Users Coalition (jointly)
Coral Power, L.L.C.
Duke Energy North America LLC, Duke Energy Trading and Marketing, LLC, and Duke Energy Merchants, LLC (jointly)
Electric Power Supply Association
Enron Power Marketing, Inc., and Enron Energy Services, Inc. (jointly)
Merrill Lynch Capital Services, Inc.
Modesto Irrigation District
Morgan Stanley Capital Group Inc.
New York Mercantile Exchange
Northern California Power Agency
Pacific Gas and Electric Company
Pinnacle West Companies
PPL Montana, LLC, and PPL EnergyPlus, LLC (jointly)
Public Utilities Commission of the State of California
Puget Sound Energy, Inc.

Reliant Energy Power Generation, Inc., and Reliant Energy Services, Inc. (jointly)
Sacramento Municipal Utility District
Southern California Edison Company
Southern Energy California, L.L.C., Southern Energy Delta, L.L.C., and Southern Energy Potrero, L.L.C. (jointly)
Tractebel Power, Inc.
Transmission Agency of Northern California
Turlock Irrigation District
Western Area Power Administration
Williams Energy Marketing & Trading Company

Intervenors and Respondents to Complaint in Docket No. EL01-2-000

Bonneville Power Administration
California Department of Water Resources
California Independent System Operator Corporation
California Large Energy Consumers Association
California Manufacturers and Technology Association
California Power Exchange Corporation
Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency (jointly)
City and County of San Francisco, California
Cogeneration Association of California and the Energy Producers and Users Coalition (jointly)
Duke Energy North America LLC, Duke Energy Trading and Marketing, LLC,

and Duke Energy Merchants, LLC (jointly)
Dynegy Power Marketing, Inc., El Secunda Power, LLC, Long Beach Generation LLC,
Cabrillo Power I LLC, and Cabrillo Power II LLC (jointly)
Enron Power Marketing, Inc., and Enron Energy Services, Inc. (jointly)
Independent Energy Producers Association
Merrill Lynch Capital Services, Inc.
Modesto Irrigation District
Morgan Stanley Capital Group Inc.
New York Mercantile Exchange
Northern California Power Agency
Pacific Gas and Electric Company
Pinnacle West Companies
PPL Montana, LLC, and PPL EnergyPlus, LLC (jointly)
Public Utilities Commission of the State of California
Reliant Energy Power Generation, Inc., and Reliant Energy Services, Inc. (jointly)
Sacramento Municipal Utility District
Southern California Edison Company
Southern Energy California, L.L.C., Southern Energy Delta, L.L.C., and Southern
Energy Potrero, L.L.C. (jointly)
Tractebel Power, Inc.
Transmission Agency of Northern California
Williams Energy Marketing & Trading Company

Intervenors and Respondents to Complaint in Docket No. EL01-10-000

Alcoa Inc., Atofina Chemicals, Inc., Goldendale Aluminum Company, Kaiser Aluminum & Chemical Corporation, Northwest Aluminum Company, and Reynolds Metal Company (jointly)
Avista Corporation and Avista Energy, Inc. (jointly)
California Independent System Operator Corporation
Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency (jointly)
Cogeneration Coalition of Washington
Columbia Falls Aluminum Company
Duke Energy North America LLC, Duke Energy Trading and Marketing, LLC, and Duke Energy Merchants, LLC (jointly)
Enron Power Marketing, Inc., and Enron Energy Services, Inc. (jointly)
Idaho Power Company
Industrial Customers of Northwest Utilities
Modesto Irrigation District
PacifiCorp
Pinnacle West Companies
Portland General Company
PPL Montana, LLC, and PPL EnergyPlus, LLC (jointly)
Sacramento Municipal Utility District
Southern California Edison Company
Transalta Energy Marketing (US) Inc., Transalta Centralia Generating LLC, and AES Pacific, Inc. (jointly)
Transmission Agency of Northern California

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

San Diego Gas & Electric Company Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	Docket Nos. EL00-95-000 EL00-95-002 EL00-95-003
Investigation of Practices of the California Independent System Operator and the California Power Exchange,	Docket Nos. EL00-98-000 EL00-98-002 EL00-98-003
Public Meeting in San Diego, California,	Docket No. EL00-107-000
Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., Complainants, v.	

California Independent System Operator Corporation Respondent.	Docket No. EL00-104-000
California Electricity Oversight Board Complainant, v.	
All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	Docket No. EL00-104-000
California Municipal Utilities Association, Complainant, v.	
All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	Docket No. EL01-1-000

Californians for Renewable Energy, Inc. (CARE)

Complainant,

v.

Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation

Docket No. EL01-2-000

Respondents.

Puget Sound Energy, Inc.

Complainant,

v.

All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement,

Docket No. EL01-10-000

Respondents.

(Issued January 4, 2001)

Hoecker, Chairman, *concurring*:

This opinion is submitted many days after the Commission's Order of December 15, 2000 (December 15 Order). I strongly support that order as a way to stabilize and lower California's extraordinary electricity prices now and to initiate important steps toward ensuring service reliability and reasonable prices for California consumers in the long term. The Commission decided that a facile short-term "fix" could not substitute for a measured set of responses to the complicated and systemic problems associated with the design of California's power market.

The Commission is nevertheless fully aware of the financial pressures that current prices are placing on consumers in California and the West. Our Order and Commissioner Massey, in his concurrence, describe the depth and difficulty of this crisis. None of the answers are easy. Therefore, the December 15 Order in no way relieves the Commission of its responsibility to work assiduously – through the measures adopted on December 15 and other actions I suggest below – to return California's markets to a semblance of normalcy and prepare those markets to meet the challenges of the coming summer peak season.

The Western energy shortage has metastasized into a financial crisis of major proportions as well as a crisis of consumer confidence, and events of the last weeks have not altered the fundamental challenge. Here is what has occurred:

- Concerns have intensified about the solvency of California's old line utilities as

their retail rates remained capped while wholesale prices remain volatile.

- Secretary of Energy Richardson has issued three emergency orders for Western power generators with excess energy to sell into California to stave off outages. Sales under those orders have comprised a modest but critical share of the total available supply of power.

- In response to high electricity prices in the rest of the West, which jeopardize the finances of utilities in neighboring regions, a number of Western Governors met to consider, among other proposals, the merit of a regional price cap to stem unusual price increases throughout the Western Interconnection. They did not endorse FERC taking that action (at least for now).

- The California Public Utilities Commission began hearings to determine when to eliminate the state's rate freeze and begin passing more of the cost of wholesale power to consumers; how to maintain utilities' ability to provide adequate retail service; whether to authorize additional divestitures of generation facilities; and whether "power produced from retained generation assets should serve native load" and what kind of "ratemaking such actions entail." Yesterday, California approved a temporary retail rate increase.

- Settlement discussions before the Commission's Chief Administrative Law

Judge were convened in Washington to develop viable long-term contracts for power for California and diminish reliance on spot market prices, and are ongoing.

- To date, California's major utilities are still selling electricity output and purchasing their requirements through the PX and ISO spot market, contrary to the Commission's Order.

- Continuing pressure on infrastructure is signaled by newly released U.S. census data, which indicate a 13 percent increase in the Nation's population since 1990. The most remarkable growth rates are in the West, including 40 percent in Arizona and 66 percent in Nevada.

I. A Plea For Collaboration

The December 15 Order offers the best opportunity to begin rehabilitating the wounded California power market. It returns the utility-owned resources of Pacific Gas and Electric Company (PG&E) and Southern California Edison (Edison) to state regulation and self-supply. It lays the groundwork for the task of developing an effective market power mitigation plan. It brings market participants to the table to develop forward contracts that will withstand both regulatory review and sound business judgment. It asks for joint resolution of who should govern the ISO. It promises to sharply reduce the influence of the volatile spot market. In other words, when implemented, it will effectively cap the California wholesale market in a more defensible way than would any single state-

wide or regional rate ceiling. These mechanisms will move the price of most base load power back toward cost, while also keeping the lights on.

It is my opinion that the general level of vituperation and lack of constructive discourse among public policymakers is delaying development and implementation of a comprehensive work-out plan for California. It is difficult to overestimate the level of anger and anxiety about electric prices in California. But, this crisis cannot be simply explained or understood as the product of ideology run amok or villainy. The Commission recognizes the leverage that scarcity gives sellers of electricity and the potential for strategic manipulation of the market; it needs to develop better ways to investigate and act on abuses of market power. However, no amount of enforcement activity or legislation or litigation alone will soon alleviate the problems faced in this market. Without collaboration and negotiation between market participants and state and federal policymakers, we will continue to waste money and time. This Commission has no intention of abandoning California to its current misfortunes or letting an unsupervised market sort all this out in the fullness of time. There are real answers at hand, many in the December 15 Order, if state and market participants embrace a strategy for implementing them. For that reason, I have offered to participate in further discussions as indicated below.

The first weeks of 2001 will tell the tale. Will California regulators return 25,000 MWs of in-state utility resources to native load service under cost-of-service regulation? Will they loosen the rate freeze

and devise a long-term plan to flow trapped costs to ratepayers? Will they further accelerate plant siting decisions? Will they throw support behind the negotiations at the FERC that promise to move substantial power purchases into forward contract arrangements? There is a greater likelihood of rapid progress toward market stability in the more rational give-and-take of settlement negotiations and routine regulatory decision-making than in the heat of political discourse and press commentary. However, I do not mean to suggest that the responsibility to act is California's entirely or that this Commission's work is done. It is clear in any case that failure to devise coordinated plans for the operation of wholesale power markets in the West will only invite state legislators or referendum supporters to venture forth with a new round of grand plans that will again run afoul of the messy realities of this evolving industry.

What might a defensible work-out plan look like?

II. Work-out Plan For California

As disappointing as it may seem to some, we cannot "price cap" California out of a supply shortage; the industry cannot build its way to a better market design; the state will find it is ultimately unable to legislate its way to sustainably low rates; and generators should not expect future earnings that dramatically outdistance the industry's historical performance. Nor, in my view, should public policymakers (including those at the FERC) expect to avoid hard work or accountability by utter reliance on nascent market forces to allocate resources, especially when it puts consumers'

welfare in jeopardy. A responsible course of action is to attack the current market meltdown on several fronts over a period of time – in California's case, three to five years. I list the following categories of actions in relation to their urgency, not necessarily their importance.

A. Pricing

Consistent with the Commissioner's Order, the impacts of spot price volatility must be diminished. We have already made clear how that might be done quickly. Assuming that reliability will seldom (if ever) be sacrificed, two additional things must happen. There must be rate certainty for both consumers and load serving utilities, and that means some prospect that utilities will recover trapped purchase power costs and that ratepayers will not feel the pain all at once, as happened in San Diego. The balance between rates that reflect the costs of energy production and delivery, and thereby stimulate appropriate supply and demand responses, and rates that moderate the impacts of extreme swings in those costs is perhaps the most difficult public policy challenge.

The cost of wholesale power, which is subject to the Commission's jurisdiction, has skyrocketed as demand has outstripped state and regional power supplies; as the cost of emissions credits and natural gas has escalated; as the auction process for wholesale sales led to panic buying at extraordinary prices; and, as generators adopt arguably inappropriate bidding strategies designed to maximize their returns. The Commission has evaluated the solutions proposed to it. Reimposition

of cost-based wholesale rates, notwithstanding its surface appeal, would not necessarily reduce current problems for consumers or their utility suppliers. Our November 1 proposed Order noted that "peak demand running costs can be in the range of $160 to $200MWh for some units . . . [&] variable costs . . . can approach $500MWh." Moreover, it is unclear that California would even allow them to be flowed through to customers under current conditions.

Price caps are also identified as a way to staunch the hemorrhaging of ratepayer dollars. The public policy reasons that militate against capping markets are well known. Price caps tend to be arbitrary and potentially confiscatory; they create uncertainty for investors, discourage entry into the market, or even drive resources elsewhere, thereby fostering future scarcity; and, they could, absent an extraordinary order under state or federal emergency powers, lead to outages. The complications that would ensue from imposition of a Western regional price cap are even greater, given the legal and operational diversity of the regional power market, and raise concerns about subsidies to California's market. Price caps are the ultimate non-market solution and could work to disincent policymakers from undertaking more important reforms.

That said, price caps can lower prices, at least temporarily. They look and feel like real consumer protection. For that reason, I could support them, but under only two distinct circumstances: (1) if they were used as a method of affording a short "time out" within which parties could negotiate better ways to make the market work for consumers, such as bilateral forward contracts, demand response

programs, or equitable relief, or (2) if they were employed as "damage caps" to prevent clearly unwarranted price explosions, such as the $1000 cap used across all three northeastern ISOs. As to the first circumstance, the willingness of buyers, sellers and the CPUC to engage in serious talks is, today, still in doubt. No one to date has offered a price cap proposal in the context of a comprehensive settlement of the issues. I call upon Secretary Richardson and top economic officials to convene the California parties in an effort to map out the parameters of a comprehensive solution to the market and financial crises that afflict California. I nevertheless submit that, for such a plan to succeed, the state must be willing to help implement our December 15 Order and support longer-term reforms of the kind I outline today.

In the final analysis, prices in California will be disciplined and the credit crunch for its utilities will be eased if structural changes to the market are implemented soon and the state uses the next year or so to decide, on the basis of analysis and collaboration with us and the market participants, what kind of business and natural environment it wants and is able to sustain. Issues of retail market entry and competition, facilities siting, load growth, air quality, and regional interdependence and cooperation are part of the mix. There is no doubt in my mind that the powerful economy of the state can extricate itself from this crisis if its leaders do not jump from the frying pan into the fire by trying to reinvent the industry once again. Competition is the solution, not the problem; however, it was not well-

conceived or well-executed in California and for that, we all share blame.

One serious and little-discussed structural flaw in California's power market requires attention. It is the absence of a provision for assuring adequate generating reserves in the competitive model. The state's reserve margin has vanished in the face of surging demand. The energy market in California was kept in equilibrium during implementation of AB 1890 until early last year. But because the market was designed with the price of energy too low to stimulate enough new investment and no incentives to install reserve capacity to keep supply ahead of demand, California was on a path to a crisis that some commenters now find entirely predictable. See Figure 1 below.

[SEE FIGURE 1. CALIFORNIA CAPACITY MARGINS AND POWER PRICE LEVEL AND VOLATILITY IN ORIGINAL]

Other regions address this with a reserve obligation supported by a capacity market. Without it, says one analysis, "the market is designed to produce periodic reliability crises with energy price booms followed by price busts." CERA, "A Crisis By Design: California's Electric Power Crunch," September 2000, at 2. One might ascribe the stability of northeastern ISOs to their extensive past experience with reserve-sharing arrangements.

Of course, the capacity shortage is already upon California. Although a capacity market may be part of a long run solution for California, it will not fix this year's problems. In fact, a reserve requirement now could drive up prices by creating more demand

for scarce supplies. But as new supplies enter the market in the future, a reserve requirement met through a capacity market could prevent the cycle from starting over with a new round of shortages and high prices in California.

How would it work? The closest counterpart to storage for a normal commodity is the extra electric power generating capacity, the so-called reserve margin. Historically, utilities tried to have about 18% - 20% more capacity than would be needed. This would account for both unexpected generation outages and unexpected demand increases, mostly weather related. Adequate generating reserves reduce the frequency and severity of price spikes, just as storage does for other commodities.

The California market should impose on load serving entities and other "customers" an obligation to build or buy sufficient capacity to serve expected requirements. This is admittedly a quasi-market approach. It does not enforce maximum efficiency out of all units. But in this highly integrated business, where the system requires everyone, and not just the visionary, to be prudent or face losing service and paying high spot prices, enforced customer-side planning ahead will be a small price to pay to avoid a cycle of boom and bust.

B. Regional Solutions Are Indispensable

California is, perhaps understandably, rife with talk of electrical secessionism. Having devised a unique but failed market structure by statute, it once again wants to go it alone in finding ways to correct what is a regional problem. Some of its leaders would stop further exports of power to other

parts of the region, at least during this shortage. Even after years of relying on generators elsewhere in the region, California has developed an antipathy to out-of-state generators. A principal current policy goal appears to be to ensure that all power generated in the state is consumed there. And, it wishes any wholesale market institution like the California ISO to be "politically accountable" to the State.

Surprisingly, the importance of the Commission's Order No. 2000 to resolution of California's problem has been virtually ignored. In a region as vast and highly integrated electrically as the West, rapid development of a viable regional transmission organization will be crucial to restoring trust in the non-discriminatory operation of the grid, to effective competition for markets, to transactional liquidity and economic efficiency, and to equitable treatments for all load-serving entities in the region.

The Commission must be prepared to offer more guidance and directives on RTOs everywhere in the country now that it is clear that, with few exceptions, RTO formation is slower and more oriented to protect incumbency than we anticipated. In California and the West, however, the need for RTO development has become a matter of some urgency. And, where parties in the Pacific Northwest have assembled a workable multi-state approach, it is not clear how California fits into the regional market of the future.

There is simply no more compelling case to be made for RTOs and region-wide coordination of transmission network operations than what has happened in Western power markets in the past

eight months. No one could more passionately argue for regionality in power regulation than the recent advocates of regional price caps. Clearly, this Commission has not impressed upon the West, upon California, or upon the Congress the importance of Order No. 2000. The California ISO is due to file an RTO application under that Order soon and I doubt it will find time to do so. I also doubt it is in a position to appeal to the broader Western market. Therefore, I strongly recommend that the Commission set as a goal a West-wide RTO and publish its own requirements and timetable for achieving that end, first by commanding three sub-regional RTOs: (1) to form this year in conformance with our Order and sections 205 and 206 of the Federal Power Act; and (2) to address immediately the most critical "seams" issues relating to operational compatibility, pricing, and reliability across their borders.

In addition, Western policymakers must form ranks under the still-inchoate Western Interstate Organization (WIO) or the regional regulatory organizations (RRO) I have proposed elsewhere as an effective new way to coordinate state and federal oversight of RTOs. The time has clearly come for real action under these organizations.

C. Police Work

The Commission made major strides on December 15. It needs to work with California officials and the existing ISO to reap the benefits of that Order and to devise additional measures that would be helpful. It must nevertheless re-establish its own credibility as the watchdog of this evolving

and dynamic marketplace. That can be done in three ways. First, it must develop a substantial market power mitigation plan, including enhanced data collection and analysis methods. The Order makes that commitment clear. I believe the Commission must soon address two other soon-to-be critical issues, however.

To date, the Commission has not made clear how it will determine what is "just and reasonable" under the standards of the FPA in the world of market-based rates. Our Order identifies criteria that could go into that calculus. However, that level of specificity will simply be inadequate when the Commission seeks to assess the FPA Section 206 refund obligation of sellers for the period October 2, 2000 through December 2002. Unless the Commission is far more precise and public about how it will carry out its analytic tasks within its self-imposed 60 day rolling deadlines, it will either accumulate a massive and intractable workload or it will lay itself open to charges of whitewash. Moreover, the Commission could lose any deterrent effect such precision might otherwise achieve in the market.

Finally, the question lingers about the Commission's ability or willingness to act retroactively to correct alleged violations or inequities occurring last summer. Because I will likely not be at the table when the issue of retroactive refunds finally comes before the Commission, I have the following personal observations and recommendations. Much as I sympathize with the plight of San Diegans last summer, the simple truth is that the Commission

would be violating the law by ordering retroactive refunds. For that reason, I would urge the Commission to map out an alternative course consistent with its enforcement responsibilities.

The analysis in our November Order did not take full account of the extensive authority granted to the Commission by Section 309 of the Federal Power Act. Section 309 explicitly authorizes the Commission to "perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of the Act." A broader delegation of authority is difficult to imagine. I believe that this authorization provides us a powerful tool to remedy unlawful market abuses or other unlawful conduct. Although it remains for our investigations to determine if that occurred in the California market, the Commission is not without remedies if it did. "Agency discretion is often at its 'zenith' when the challenged action relates to the fashioning of remedies."[1] If we find that unlawful manipulation of the market occurred, Section 309 allows us to craft whatever equitable remedies are necessary to remedy the impacts of that manipulation, including (in my view) disgorgement of unlawful or otherwise excessive gains. If, as many contend, the events of the past summer resulted from collusion, predatory pricing, or unlawful manipulation of prices in violation of FERC requirements or other provisions of law, I fully expect the Commission to employ Section 309 to

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[1] *Connecticut Valley Electric Co., Inc. v. FERC*, 208 F.3d 1037, 1044 (D.C. Cir. 2000); *Towns of Concord, Norwood & Wellesley v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992).

do justice for San Diego. This will not be refunds but it could approximate them.

III. Conclusion

The work-out plan I have presented is likely to be more effective than revolutionary. This will be hard work.

With the benefit of hindsight, we now know that California's blueprint for competition did not create viable opportunities for the entry of new retail suppliers, did not give consumers the tools or incentives to make informed choices about electricity consumption, did not foster the siting of new generation capacity to serve the ever-growing load of a booming digital economy or new transmission needed to ensure reliability and access to reasonably priced electricity, and did not encumber the sales of generation assets with buy-back contracts to provide a ready source of reasonably priced energy for a transition period. Most importantly, we now also know that no piece of legislation can simply invent a market or erase the regionalism of the market or the mutual interdependence of electrical systems in the West.

Even so, California's approach worked well until last summer. Prices in wholesale markets were so much lower than the rate charged to California consumers that the California utilities were able to divert more than $11 billion towards stranded cost recovery – enough to ensure that California utilities would incur no losses on these stranded investments. This summer, however, the California experiment imploded. A combination of factors – extreme heat, ever-growing demand in California and neighboring

states and poor hydro conditions in the Northwest – placed a severe stress on the market design and revealed the faults: lack of new generation to meet demand, the inability of consumers to receive and respond to price increases (by either conserving, changing patterns of consumption, or switching suppliers), the failure of any new retail electricity suppliers to enter the market, a mandatory buy-sell requirement that prevented California utilities from operating those generation resources they continue to own in a least-cost manner, severe limits on the ability of California utilities to develop a risk-minimizing power portfolio, and an inordinate reliance on volatile spot markets. As prices escalated, concern quickly turned into crisis and crisis then turned into fear and catastrophe. So where do we go from here?

Do we give up on competition and turn back the clock? A brief look should at least make us stop and think. In 1994, California electricity prices were the highest in the Nation, and there were concerns that these high rates would drive businesses out of California and worsen an already extended recession. Those high electricity prices can be traced to a series of decisions made by state-supervised monopolies, for example to pursue nuclear power plants that eventually suffered cost overruns totaling almost $10 billion and to favor alternative technologies which raised costs of power for just one California utility by $25 billion in the decade before AB 1890. During this same period, it was the interstate wholesale market that was beginning to provide substantial benefits to all Western states, including California. Seasonal exchanges between

California and the Pacific Northwest created opportunities for both regions to save money and reduce the amount of needed generation capacity. Enhancements to the high-voltage transmission system allowed utilities in one state to site generation in neighboring states that were not as vulnerable to existing pollution impacts.

The past is prologue. We ought not rush to repeat its failures and some corrective options are no longer available. For example, California utilities no longer own the generation assets that would permit the state to return to "go." This Commission's answer to "Where do we go from here?" with regard to wholesale power markets is to keep moving forward, retain the workable portions of the California blueprint, and fix the broken parts with due speed. We need to work toward swift self-correction. If allowed to work, our December 15 Order will staunch the bleeding and begin a process of rehabilitation. It will contribute to price stability. It will reinforce utility creditworthiness. It will prevent a recurrence of this experience.

I believe our Order addresses the market flaws that were exposed this summer constructively and effectively. However, our solutions primarily involve market design and structure. The responsiveness of electricity demand to prices, as well as the supply picture and utility solvency, are beyond our immediate control or influence and must be worked through by state regulators or the market, or both. Our December 15 Order is very clear that this process of rehabilitation has at its core the responsible action of the California regulators and policy makers. In allowing bilateral transactions, in

supporting real management of risk through forward contracts, in determining utility rates that can once again move back toward cost, CPUC action is critical. We call upon that organization to step up to its responsibilities under state law and under the new circumstances that our Order creates by reforming the FERC-jurisdictional parts of AB 1890.

These are difficult times. There are strong views on all sides about who is responsible and who did what to whom. If there are inequities and unlawful conduct, they will be discovered and remedied. However, this is not as simple as much current rhetoric might suggest. Simply put, we must all work together to forge a workable bulk power market going forward. I will opt every time for state-Federal coordination instead of gridlock, for constructive negotiations instead of hyperbole. For that reason, I remain ready, willing, and (for a time) able to meet with California officials to assemble a package of remedial measures, including those in our Order, to help the state through this crisis.

s/ James J. Hoecker

James J. Hoecker
Chairman

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Respondents.

Docket No. EL01-10-000

(Issued January 18, 2001)

Hoecker, Chairman, *concurring further*:

Today I take the unusual step of issuing an addendum to my concurrence of January 4, 2001, to reemphasize the need to find a comprehensive solution to California's deepening energy crisis. This year, energy is costlier in most regions of the country, but in California a cavalcade of misjudgments and bad luck have caused a genuine

economic and social crisis. The situation has deteriorated further since early January. Negotiations over long term contracts have reached impasse, notwithstanding many hours of tough talk in Washington and the herculean (but ultimately inadequate) efforts of state legislators to buttress sagging utility creditworthiness and to find a sustainable retail rate compromise. California's reserves have evaporated this winter as recurrent plant outages continue and weather forced valuable units off line. Yesterday, the ISO had no choice but to order rolling blackouts in northern and central California in order to prevent a system collapse. So, to the financial crisis, we now add a serious threat to human welfare. With consumer rates frozen below cost (and below 1996 levels), with generators wary of making sales to entities probably unable to pay for power generated at unseasonably (and even historically) high cost, and with no plan to amortize existing utility arrearage, Southern California Edison and Pacific Gas & Electric stand at the brink of insolvency. For following the state's restructuring law, they may go bankrupt. Moreover, with only minimal forward contracting and utilities still subjected to high PX spot market prices for their "net short" position, the Commission's plan to diminish and discipline the spot market remains unrealized. Amidst a severe power shortage, conspiracy theories, resistance to more realistic rates, and calls for palliative price caps continue to obscure the issues and delay solutions.

Perhaps bankruptcy can be averted. If it cannot, perhaps it will force the debtors, creditors, and state officials to address the financial problems of utilities

in a new light, without recrimination and posturing. Will the time for positive planning then be at hand? Let's be realistic. Chapter 11 will not recast or dispose of the California's serious ratepayer and public interest issues. It will not eliminate the power or responsibilities of regulators. It will not enable the system to create one additional electron. And, while it will not necessarily reduce service reliability or render utilities inoperable, neither will it improve electricity service functions, at least without the kind of technical planning and difficult choices we have repeatedly urged. Wall Street and consumers share one critical trait: without a reasonable, technically defensible, and comprehensive set of solutions to such crises, they have no basis for confidence that problems can or will be managed or confidence to support investment on one hand and political forbearance on the other.

I take the liberty, at this moment of my departure from office, to reiterate what must be done here and in California, and perhaps to puzzle about why this is so hard.

A. The State Needs To Work With, Not Against, FERC

The Commission's December 15, 2000, order must be implemented expeditiously. The PX has yet to comply with the new pricing procedures which limit the impact of the single price auction. As a result, prices produced by the PX are not in compliance with the order (*i.e.*, all sales continue to be priced at the highest cost rather than at the $150 breakpoint for bids at or below $150 or at their bid price if above). This confuses boththe market and public

policymakers. It will lead either to increases in the cost of power to buyers above that permitted by the December 15 order or retroactive recalculation of the rate using the $150 limit to enforce compliance. The potential for prices above the level allowed in the December 15 order has further jeopardized the financial status of California utilities.

B. Manage The Risks.

Forward contracts have to be negotiated as soon as possible, with or without a bankruptcy. Delay simply increases the cost to consumers in the long run, and many opportunities for lower cost forward contracts have already been lost in the false expectation that more time would lead to lower, not higher, prices. Sooner or later,retail prices must provide for recovery of legitimate costs incurred to meet the needs of consumers. While there may be multiple ways to blend rates over time to lessen ratepayer burdens and defer recovery, an arbitrary bottom-line solution cannot be prescribed without regard to costs, the availability of units, and the dynamics of the regional electric system.

C. Regulators Must Regulate.

New techniques for monitoring and mitigating market power must be designed expeditiously, in accordance with our order. I believe that the exercise of market power is not unlawful in and of itself. There are clearly circumstances in which market power is used for more than taking advantage of revenue maximizing opportunities. If the market permits the imposition of unjust and unreasonable rates, these circumstances must be identified and penalties applied – based on more

than supposition. Consumers are entitled to fair rates and suppliers are entitled to know the standards to which they will be held and the consequences for failing to adhere to those standards. Those consequences must be implementable in real-time; after-the-fact refunds are not a suitable foundation for remedying market power going forward, even though we should pledge to post-October 2, 2000, refund obligation timely and fairly. All this is this Commission's responsibility, but the CPUC and other appropriate California officials can demonstrate their willingness to work constructively with us. We can start down a new road together beginning on January 23, 2001, when we convene an important technical conference on California's market problems.

D. More Police Work

Investigations of outage events must be completed, not only for the purpose of identifying past behavior that may have been unlawful, but also for the purpose of identifying future market monitoring techniques and to identify opportunities for coordinating planned outages throughout the regional market to bolster reliability.

E. New Regional Procedures

In addition to prompt review of prices for transactions during 2001, the Commission must adopt expeditious procedures to review prices occurring between October 2, 2000, though the end of 2000. Unless and until the Commission determines the just and reasonable rate for all transactions under occurring during the refund

period, the refund obligation of suppliers cannot be resolved.

F. Separating Markets and Politics

California's recent legislation changing the ISO governance board reflects, in my view, another triumph of expedience over cooperation and understanding of the electric system. While stacking the board of a FERC-jurisdictional public utility with state political appointees may not raise ire in California, it is an unacceptable intrusion - - not unlike the mistakes of AB1890 - - into federally regulated power markets. Such a measure surely imperils the California ISO's eligibility as an RTO under Order No. 2000. Because the state is now clearly a market participant, the independence of the board is bound to be compromised. Consequently, the state's decisions are no longer entitled to the kind of deference we have accorded it since AB 1890. More than that, this action evinces a bald disregard for federal jurisdiction and a rejection of cooperative solutions. On December 15, the FERC delayed making a final ruling on governance in order to consult with state authorities on this matter. This is their apparent response. I do not think the legislation offers any meaningful chance to negotiate a deal. Therefore, I recommend that the Commission seek to enjoin this technically flawed and unlawful usurpation of its authority.

G. Price Caps Revisited.

The Commission must be prepared to support plans that constructively and comprehensively address the situation. As I stated in my earlier

concurrence, I support a "time out" from current wholesale prices, if they are part of a work-out plan that has a chance of garnering support from all parties and achieving an equal sharing of the pain. Without that, price caps will only jeopardize reliability, mask problems temporarily, and deter or destroy any chance to solve the long-term supply challenge.

Conclusion

Urgency is a must. I am persuaded that California's utilities can still be withdrawn from the brink. But their descent into Chapter 11 does not materially alter the need to act to devise a coordinated plan of action. We have reached this stage of growing crisis through a series of acts of short-term thinking and now the desperation is palpable. We cannot, however, keep moving from one failure to the next, with no agreed-upon objectives. The Governor's stated plans are unrealistic and ours cannot be fully implemented without his help. Time to put down the guns.

The long-term health of California wholesale markets turns on access to regional markets that are competitive and efficient and which eliminate existing barriers to regional reliability and coordination. Participation in a regional transmission organization (RTO) will provide the best opportunity to bring back reliability and rate stability to California consumers quickly. I urge state policymakers to reject the false illusion that going it alone will serve the interests of California consumers. Instead, policymakers from all Western states should work together to maximize the benefits

of the regional grid and regional market for all Western consumers. It is in our collective interest and in the interest of the Nation's economic welfare, to begin the difficult process of developing a New Electric System capable of meeting unanticipated demand, serving customers in an economic and environmentally acceptable manner, and generating creativity and service innovation along with electricity.

s/ James J. Hoecker

James J. Hoecker
Chairman

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

San Diego Gas & Electric Company Complainant, v.	
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange Respondents.	Docket Nos. EL00-95-000 EL00-95-002 EL00-95-003
Investigation of Practices of the California Independent System Operator and the California Power Exchange,	Docket Nos. EL00-98-000 EL00-98-002 EL00-98-003
Public Meeting in San Diego, California,	Docket No. EL00-107-000
Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., Complainants, v.	

California Independent System Operator Corporation Respondent.	Docket No. EL00-104-000
California Electricity Oversight Board Complainant, v.	
All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	Docket No. EL00-104-000
California Municipal Utilities Association, Complainant, v.	
All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	Docket No. EL01-1-000

Californians for Renewable Energy, Inc. (CARE)

Complainant,

v.

Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation

Docket No. EL01-2-000

Respondents.

Puget Sound Energy, Inc.

Complainant,

v.

All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement,

Docket No. EL01-10-000

Respondents.

(Issued December 15, 2000)

MASSEY, Commissioner, *concurring*:

It is no secret that I have been deeply concerned about the apocalypse occurring in California power markets. Prices have not been just and reasonable, and market power has been exercised. Today's order re-emphasizes these critical findings. As a result, the transfer of wealth from purchasers of power to sellers has been absolutely staggering and completely defies the public interest. No legitimate public purpose has been furthered by this regrettable spectacle. The State's two largest utilities are virtually bankrupt because the billions in wholesale power purchase costs vastly exceed the amounts they have been allowed by state policy to recover from their customers. This is, of course, a mixed blessing – it bankrupts the utilities yet in the short term protects the bulk of the State's consumers from these astronomical prices. Yet it is not sustainable long term, and it serves no legitimate policy interest to bankrupt the utilities. It seems rather clear to me that some day soon a federal court, if asked, will declare that the utilities are entitled as a matter of federal preemption to recover these high wholesale costs from their customers. That's the way I read applicable precedent such as *Nantahala*, *Narragansett*, and *Mississippi Power & Light*.[1] And once these costs are passed through, of

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[1] *Nantahala Power and Light Co. v. Federal Power Commission*, 384 F.2d 200 (4th Cir. 1967), *cert. denied*, 390 U.S. 945 (1968); *Narragansett Electric Co. v. Burke*, 119 R.I. 559, 381 A.2d 1358 (1977), *cert. denied*, 435 U.S. 972 (1978). *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354 (1988).

course the entire state, not just San Diego, will be in a perfectly legitimate and understandable uproar.

Meanwhile, virtually no new generation has been installed in California in over ten years, although substantial new generation is in the process of being sited by California officials. In addition, substantial transmission additions are necessary to eliminate bottlenecks that prohibit cheaper power from reaching consumers. These are problems that California officials too must work to resolve, and I encourage them to do so.

In this context, there is a lot to like in this order. It is a very worthy effort to deal with the market meltdown in California. It forcefully deals with a number of critical issues. I strongly support the fundamental thrust of this order to move the bulk of the market aggressively toward forward contracts and away from an over reliance on the volatile and exorbitantly priced spot markets operated by the ISO and PX. If our order can achieve this goal, it will go a long way toward ensuring just and reasonable prices in California. The over reliance on the spot markets, a feature built in to the California market design, is a glaring flaw that must be corrected, and this order takes bold steps to do so.

I heartily endorse this order's elimination of the existing requirement that the California utilities sell all of their generation, and purchase all of their power needs, through and ISO and PX markets. This so-called buy/sell requirement, again a fundamental feature of the California market, is forcing the utilities to the volatile spot markets. The utilities should have the flexibility to sell their

substantial portfolio of generation assets and contracts directly to their end use customers such as homeowners, hospitals and small businesses, thereby bypassing the wholesale market entirely with these 25,000 MW of assets. As our order points out, this is roughly 60% of the market at peak, and is probably 90% of the market off peak. Under today's order, the California Commission may require the utilities to offer these 25,000 MW at regulated cost of service rates. Inexplicably, the California Commission objects to this provision, yet consumers who have been concerned about over reliance on FERC regulated wholesale markets should know that today's order "defederalizes" no less than 60% of the California market on peak days. In other words, had today's order been in effect over the past summer, fully 60% of generation supply on the hottest day could have been sold at prices capped by the California Commission at regulated cost of service rates. This is a huge pro-consumer change that the California Commission must embrace.

The ISO must have an independent board of directors, although as our order recognizes the State of California has a legitimate interest in ensuring that board members, though independent, are appropriately cognizant of state concerns in addition to regional concerns. Our order offers to work with the State, though appropriate technical conferences devoted to this issue, to ensure that the independent board selection process is structured reasonably with these concerns in mind.

I am pleased that our order sends an unmistakable signal that substantial additional market design changes will be required long term.

Early next year our staff will host a technical conference devoted to revamping the market rules that define the manner in which the ISO operates real time markets and prices congestion. Our order specifies that this technical conference will focus on moving the ISO toward locational marginal pricing, security constrained unit commitment dispatch, an installed capacity market, reserve requirements, and demand side response programs. My own view is that the California ISO's market rules should look more like those of PJM. PJM, formerly a tight power pool, is in my judgment the most efficient power market in the country, and the California market should emulate the PJM market design to the extent feasible. Although I would have used stronger language in the order to achieve this result, I am satisfied that our order takes large steps in this direction and sends strong signals about the virtue of a new market design based upon LMP for congestion management and security constrained economic dispatch.

As I have mentioned, I agree with the reaffirmation of our earlier conclusions that prices are not just and reasonable and market power has been exercised. These are important conclusions.

There are a number of areas, however, where I disagree with our order. I would have handled these issues differently. I disagree with the order's language that there is insufficient evidence on the record before us to find specific instances of the exercise of market power. At this time our staff is in fact in the process of investigating allegations of market power abuses by suppliers, so this conclusion is at best premature. I have been presented no

analysis by our staff that would allow me to conclude that specific exercises of market power have not occurred, and in fact an investigation is underway. To the extent that our order implies the contrary, I disagree.

I am not at all enamored with the so-called $150.00 break point. I have deep reservations about whether it will serve a useful purpose and in fact mitigate high prices. I hope that it does, but I doubt it. I would have strongly preferred the imposition of a hard price cap for the spot markets (exempting new generation), calculated on a generator-by-generator basis at each generator's variable operating costs plus a reasonable capacity adder perhaps in the range of $25.00. This would vary over time and would allow each generator to recover its fuel, emission permit and O&M costs, plus a reasonable adder. I come to this conclusion reluctantly, 3 but it is time to staunch the hemorrhaging in the volatile spot markets.

I disagree with the order's assertion that a five year forward contract at a price of roughly $74.00 per MWh is likely to be just and reasonable. The $74.00 figure is intended to be a benchmark price, but to me it would be a much more appropriate figure for a contract of two year's duration rather than a five year contract. I am pleased, however, that the order at least declares that this is not a price floor and that lower price may be justified by the facts of a particular deal.

In this order I would have preferred to open a section 206 investigation into wholesale prices in the entire western interconnection. We have a number of

requests before us to do this, based upon the theory which I support that the entire western interconnection is one big machine that ought to be dealt with as a whole. A number of public officials from the Pacific Northwest in particular are very concerned about both the volatility and level of wholesale prices. I share those concerns, and would have opened a formal investigation in this order. I am told by our legal counsel that such a formal investigation is probably a necessary precursor for any type of region-wide price relief.

I am concerned that prices in California were not just and reasonable before October 2 of this year, yet our section 206 authority may prohibit retroactive refunds. Our November 1 order suggested that the parties explore equitable relief, and I would have strongly preferred to use this order to set a date for a settlement conference to before one of our administrative law judges aimed at exploring equitable relief for Californians. This is an important issue that should not be ignored or simply placed on the back burner by this agency.

Finally, I would have used this order to act on PG&E's request for a separate settlement conference to help negotiate forward contracts that would be acceptable to the sellers, purchasing utilities and California Commission. I strongly support such a conference, and recommend that a date be set before one our ALJ's as soon as possible. We should vigorously pursue this settlement option that will facilitate forward contracting in California.

Therefore, I concur with today's order.

s/ William L. Massey

William L. Massey
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

San Diego Gas & Electric Company, Complainant, v.	
Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	Docket Nos. EL00-95-000 EL00-95-002 EL00-95-003
Investigation of Practices of the California Independent System Operator and the California Power Exchange,	Docket Nos. EL00-98-000 EL00-98-002 EL00-98-003
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Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., Complainants, v.	
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California Electricity Oversight Board,

Complainant,

v.

All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange,

Respondents.

Docket No. EL00-104-000

California Municipal Utilities Association,

Complainant,

v.

All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange,

Respondents.

Docket No. EL01-1-000

Californians for Renewable Energy, Inc. (CARE),

Complainant,

v.

Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California

Docket No. EL01-2-000

Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation,

Respondents.

Puget Sound Energy, Inc.,

Complainant,

v.

All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement,

Respondents.

Docket No. EL01-10-000

(Issued December 13, 2000)

HÉBERT, Commissioner, *concurring*:

Few can doubt that California, truly, is in the throes of an energy emergency. The ISO struggles daily to procure enough power in the spot market to keep the lights on. Load serving utilities, unable to pass billions of dollars of purchased power costs along to customers, sustain cuts in their credit ratings and threats to their solvency. Wholesale and retail customers experience, or soon threaten to experience, sharp increases in their electricity bills.

(This is on top of sharp projected increases in natural gas prices this winter.)

Enter the FERC. California electricity customers –who now know much more about energy supply and regulation than they should be forced to–hope that the Commission will impose restraints on the market for electricity that will ensure that their bills will, hopefully soon, go down. California electricity suppliers–who are increasingly wary of entering uncertain California markets–hope that the Commission will allow markets to operate as competitive markets are supposed to. And California regulators and politicians–who now may wish that they had never pioneered electricity restructuring–turn to the Commission to reform markets that operate in a half-regulated, half-competitive hybrid environment.

Today the Commission issues its final order on reforming California electricity markets. Today's order contains just enough to ensure that everyone who has turned to the Commission for relief will return disappointed in some respect. Undoubtedly, the Commission will be portrayed as the Grinch Who Threatens to Steal Christmas.

To be frank, I too am a little disappointed by today's order. It stops short of ordering those remedies that are truly necessary to promote a competitive electricity market that will, if given a chance, operate to the benefit of all consumers. I view today's order as a missed opportunity. Current emergency circumstances should embolden federal and state regulators – not intimidate them – to take decisive action. Timidity is no longer excusable. California ratepayers will benefit from the

restructuring of the California energy market only when the market is allowed to operate without artificial restraints designed by regulators and politicians who believe that they know best how to serve energy customers. The Commission needs to act now to ensure that energy suppliers have an incentive to enter capacity-starved California markets, that local load-serving utilities have strong reason to hedge against price risk, that entrepreneurs have a motivation to develop new products and technologies, and that consumers share a motivation to conserve.

I stated much these same concerns in my concurring statement attached to the Commission's November 1 proposed order in this proceeding. At that time, I explained that, if it were up to me, the Commission's order would be much, much different. I would have adopted some of the remedial measures that the Commission declined to adopt. And I would have refrained from adopting some of the remedial measures that the Commission did adopt.

To summarize briefly, I would have adopted the following remedial measures: (1) eliminate all price controls; (2) abolish the single price auction for bids into the ISO and PX; (3) terminate the mandatory buy-sell requirement in the PX; and (4) direct the ISO and PX to address remaining impediments in their January, 2001 regional transmission organization (RTO) filing. I would not have adopted the following remedial measures: (1) modify the single price auction; (2) disband stakeholders boards of the ISO and PX at this time; and (3) dictate to market participants how best to manage risk. Finally, I stated that the Commission should have been more forthright and candid in its discussion of

potential refunds. In particular, I expressed concern that the specter of potential refunds for prices that already have been adjudged to be just and reasonable, within the meaning of the Federal Power Act, will only exacerbate supply deficiencies in California by accelerating the exodus of power outside California.

One and one-half months – long enough for a Presidential election and a five-week recount – have now passed. I still have many of the same concerns that I identified in my November 1 concurrence. For this reason, I continue to concur separately from today's order.

Nevertheless, I am pleased by the direction of the Commission. Today's order is not optimal from my perspective or, I suppose, from the perspective of any other Commissioner. But it represents a balanced, considerate approach that has won the approval of all four Members of the Commission. I thank the Chairman of this Commission for crafting a document that we can now agree will help to move California markets in a direction that will begin to deliver on the promise of restructuring that was made to California customers several years ago.

In particular, I am pleased with the tone of today's order. It states unequivocally that the Commission is committed to moving forward, not backward. It recognizes candidly that California energy customers have been suffering in recent months. It also recognizes that the solution to this suffering is to promote the evolution of truly competitive markets. Key to this competitive evolution, the order explains, is the introduction of electricity supply into California. For example, the

Commission today states that "we cannot afford to stymie entry and we therefore chose to err on the side of relying on the market to set the scarcity price subject to our monitoring rather than depressing prices and running the risk that much needed supply goes elsewhere." The Commission also states that "the one thing that California needs most is new supply and a return to traditional cost of service ratemaking will not encourage supply to enter the California market." Other passages similarly emphasize the Commission's commitment to promoting supply.

I still oppose the $150 "breakpoint" proposed in November and ratified in today's order. I still believe – especially so after reviewing the comments on this point – that the breakpoint will operate as a soft cap that will stifle the entry of generation into California markets. This is precisely what California does not need. As the Commission states in one short sentence, with remarkable clarity and conciseness that is rarely found in Commission orders, "Price caps will stifle needed entry." If the Commission were true to its words, it would take the initiative now to eliminate the breakpoint and any other measure, whether hard, soft, or in-between, that threatens to inhibit generation entry and the precarious reliability of the California grid.

If the Commission must insist on a breakpoint, I would (initially) set it at the existing $250MWh figure. Any hesitation on this point should be eliminated by the action the Commission took just last week. In response to an emergency plea from the ISO, the Commission accepted a tariff amendment that replaced the existing $250 hard cap with a $250 soft cap, modeled after the Commission's proposed

breakpoint. In approving this revision, the Commission adopted the ISO's explanation that a higher, softer cap is necessary: (1) to allow generators to recover their operating costs; (2) to better enable the ISO to procure desperately needed generation resources; and (3) to maintain the reliability of the transmission system. Today's order makes no effort to reconcile the two orders.

I also would insist on some type of escalator provision if I were convinced the breakpoint would remain in effect for an extended period of time. In my concurrence from the November 1 proposed order, I explained my preference for the breakpoint figure to escalate upward by specific amounts (say, $250 or $500 amounts) at specific intervals (say, every six months). In this manner, California market participants and institutions, in conjunction with California regulators and legislators, would have the incentive to respond *immediately* to the market design flaws identified by the Commission. Testimony from consumer groups at our public conference in this proceeding, held on November 9, 2000, in Washington, D.C., supported such an approach.

However, I no longer have any reason to insist on such an escalator. Today's order is clear that the $150 soft cap will remain in effect for only four months. Specifically, the order explains that the breakpoint will cease at the end of April. At that time, the Commission's interim monitoring of breakpoint information will be replaced by a comprehensive monitoring and mitigation program developed by market participants, working with the assistance of Commission staff. I appreciate the effort of the Commission today to promote

cooperative, market-determined solutions – rather than advance unilateral governmental solutions – to identified market problems.

Moreover, I appreciate the resolve of the Commission to resist the entreaties of commentators who wanted to lower the cap, harden it, regionalize it, index it, load-differentiate it, or tie it to cost. These are difficult decisions for the Commission. Emotions run high on this topic, and pressure is intense. Today, the Commission stands united that competitive energy markets remain the goal and that competitive markets require simplicity and transparency – not additional government-imposed obstacles. The fact that the cap goes away in four months tells the politicians in California to remove impediments to supply immediately. If such impediments are not removed, the people of California should know precisely where to place the blame.

I applaud another feature of today's order. I worried in my November concurrence that the specter of after-the-fact price correction would scare energy suppliers out of California markets. Most of all, market participants want consistency and certainty. The type of capital investment that California needs requires a degree of assuredness that the Commission, to date, has been reluctant to offer. The hard-working people of California deserve that assurance in order to have reasonably priced electricity that never must be turned off because of shortages.

I am pleased to state that the Commission now recognizes the need for greater certainty in electricity pricing. Specifically, the Commission now

intends to close its review of bids into the ISO real-time market after 60 days. If generation sellers have not received notification from the Commission within 60 days, refund liability will automatically end. In a similar light, today's order also explains that all bids – even those in excess of $150 – will not later be reduced if they simply reflect the higher cost of generation inputs and the true cost of scarcity. These limitations – reserving "price mitigation" for real exercises of market power rather than focusing on price level itself – represent an impressive contribution to the Commission's basket of remedial measures.

I am also pleased that the Commission has carved out a role for the State of California in selecting the new Governing Board for the ISO. In my November 1 concurrence, I stated concern that the Commission needlessly was provoking a constitutional show-down by deciding for itself how best to reconstitute the stakeholder board of the ISO – without seeming regard for the legislative design of that board. I have no particular fondness for the stakeholder board, which has demonstrated itself to be incapable of prompt and truly independent decision-making. But I had even less fondness for the Commission's decision to dictate little, if any, role for state officials and interested market participants in the selection of a new Board.

Today's order rectifies this problem. Specifically, it establishes procedures to discuss with state representatives the appropriate role for the State of California in the selection of the new Board. Moreover, today's order corrects a glaring omission from the November 1 order, by recognizing that the upcoming RTO filing by the ISO is the appropriate

vehicle for assuring the independence of the Governing Board. In this manner, today's order appropriately places the Commission primarily in a reviewing role, rather than a drafting role, in the selection of a new Board.

There are, of course, many other provisions in today's order that are worthy of comment. Mercifully, I will refrain from additional comment on all of the remaining provisions save one. That provision is the Commission's decision today to establish a benchmark price for wholesale bilateral contracts.

I agree wholeheartedly with my colleagues that the Commission must act to move load from volatile spot markets run by the ISO and PX to long-term forward markets. As today's order explains, energy suppliers and customers can best insulate themselves from price instability, and thus hedge against risk, by executing long-term bilateral contracts outside the ISO and PX. That is why I favor the Commission's decisions to: (1) eliminate the obligation of investor-owned utilities to sell all of their generation into, and buy all of their generation from, the PX; and (2) terminate the PX's wholesale rate schedules.

I nevertheless have reservations about the Commission's decision to go one step farther and to establish a benchmark for long-term wholesale contracts. I have trouble understanding what purpose the benchmark will serve in practice. The Commission has no reason to presume the reasonableness of long-term prices at or below the benchmark. This is because all long-term sales by public utility suppliers must be made under market-

based sales tariffs that already have been approved by the Commission. Thus, all long- term sales, whether priced at a figure below, at, or even above the benchmark already have been adjudged to be reasonable. Moreover, the $74 benchmark figure is close to arbitrary; it is based on historical numbers and may have little actual relevance to market conditions now and in the future.

However, I do understand what the Commission is trying to accomplish. In establishing a benchmark, it is attempting to motivate the California Commission to adopt its own benchmark and safe harbor for generation purchases by California utilities. As today's order, as well as recent headlines, make clear, California has at its disposal right now a solution to much, if not all, of its supply woes. Wholesale suppliers and customers alike want to lock in stable, multi-year prices for electricity. They are ready to execute contracts. What is holding them back is the historic eagerness of the California Commission to second guess long-term purchase decisions and to determine, on the basis of currently prevailing prices, whether past purchasing decisions were prudent.

I hope that the California Commission follows our suggestions on necessary market reforms. It is that Commission – not the FERC – that now holds the ultimate power to end the electricity crisis that now looms over California. California's concern for price is understandable. It justifiably might think that California utilities might cut better, lower-priced deals in later months or years. However, at this critical juncture, California's principle concern must now be supply. The state must now take immediate action to free up supply for California customers by

informing willing sellers and buyers – right now – that long-term sales at reasonable, historically-justified prices are acceptable (if not preferable). This is the only real way to mitigate exposure to high, volatile prices in the spot market.

It deeply bothers me when I see pictures of the California State Christmas tree standing unilluminated at night. My bother turns to great sadness when California customers confront bills they cannot afford and must make grievous choices affecting their lives and businesses. The FERC has now done what it must. I hope the CPUC and the State of California act in kind as well.

In the spirit of this holiday season, FERC puts its hands out to the great people of California and, I hope and pray, the leaders of that great state will deliver the goods. It is a gift Californians deserve.

For all of these reasons, I respectfully concur.

s/ Curt L. Hébert, Jr.

Curt L. Hébert, Jr.
Commissioner

APPENDIX H

95 FERC ¶ 61,418

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

Before Commissioners: Curt Hebert, Jr., Chairman; William L. Massey, Linda Breathitt, Pat Wood III, and Nora Mead Brownell.

San Diego Gas & Electric Company
Complainant,

v.

Docket No. EL00-95-031

Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange,
Respondents.

Investigation of Practices of the California Independent System Operator and the California Power Exchange

Docket Nos. EL00-98-030 EL00-98-033

California Independent System Operator Corporation	Docket Nos. RT01-85-000 RT01-85-001
Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council	Docket Nos. EL01-68-000 EL01-68-001

ORDER ON REHEARING OF MONITORING AND MITIGATION PLAN FOR THE CALIFORNIA WHOLESALE ELECTRIC MARKETS, ESTABLISHING WEST-WIDE MITIGATION, AND ESTABLISHING SETTLEMENT CONFERENCE

(Issued June 19, 2001)

Introduction and Summary

On April 26, 2001, the Commission issued an order (April 26 Order) [1] establishing new price mitigation for sales in the California Independent System Operator's (ISO) ancillary services and imbalance energy markets (spot markets).[2] The April

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[1] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 95 F.E.R.C. ¶ 61,115 (2001). On May 25, 2001, the Commission issued an order providing clarification and preliminary guidance on the implementation of the mitigation plan. 95 F.E.R.C. ¶ 61,275 (2001).

[2] The price mitigation established in the April 26 Order replaced the price mitigation previously in effect for such sales, and is an outgrowth of a Commission investigation under section 206 of the Federal Power Act (FPA) of the

26 Order also instituted an investigation under section 206 of the Federal Power Act (FPA) into the reasonableness of the rates for wholesale sales in the spot markets[3] in the Western Systems Coordinating Council (WSCC).[4] In so doing, we were mindful that the West is a single market which is at once inextricably interrelated, yet characterized by important differences. Fundamental in this regard is that the California spot markets are presently administered largely through the ISO's centralized clearinghouse, which operates a single price auction, while sales in the rest of the West are consummated on an individual bilateral contract basis and not through a centralized clearinghouse.

We have received and carefully considered many comments on how to change or improve our price mitigation in California and on whether and how to initiate price mitigation in the rest of the WSCC. Today, we will prescribe price mitigation for spot markets throughout the West which will guide the WSCC's energy markets through the difficult process of self-correction. In so doing, we seek to intervene in markets in as limited a manner as possible consistent with our responsibilities to ensure just

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reasonableness of rates for public utility sales through the markets operated by the ISO and the California Power Exchange (PX).

[3] As used throughout this document, the terms "spot markets" or "spot market sales" means sales that are 24 hours or less and that are entered into the day of or day prior to delivery.

[4] References throughout this document to the WSCC are intended to refer only to the United States portion of the WSCC.

and reasonable rates under the FPA, to rely on market principles wherever we can, and to balance carefully the need for price relief against the need for price signals to attract critical supply entry.

Today's order is one of a series of mitigation directives that began with our underlying order, issued December 15, 2000,[5] to correct dysfunctions in the wholesale power markets operated by the ISO and PX. Specifically, the elimination of the mandatory buy-sell requirement and the elimination of the PX rate schedule have helped to turn the tide in eliminating California investor-owned utilities' chronic reliance on spot markets. The effects of the price mitigation directed by our December 15 Order and the actions of the State of California in moving to longer-term contracts and conservation efforts have had a significant dampening effect on prices. As a result, California investor-owned utilities no longer rely on spot markets for meeting the entirety of the needs of the electric customers they serve. California now forecasts that it will only rely on the spot markets this summer for about 20% of its on-peak energy requirements, as compared to 100% prior to the December 15 Order.[6] In fact, in certain hours, the ISO data show no purchases whatsoever in its imbalance energy market. Because this market is

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[5] *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 93 F.E.R.C. ¶ 61,294 (2000) (December 15 Order).

[6] Update of California Department of Water Resources Power Purchase Contract Efforts, California Department of Water Resources (May 31, 2001).

the closest in time to when load must be met, it can exhibit the highest prices in times of shortage.

The reduction of the size of the ISO's spot market to levels more reflective of appropriate risk management was, and remains, the cornerstone of our price mitigation. The reduction of the size of California's spot market in conjunction with the mitigation plan adopted in our April 26 Order, as well as a dramatic reduction in gas prices and fewer generation outages in California, are among the factors that have had the effect of lowering energy prices in the West. Western power prices have fallen recently, with reports by the ISO citing peak daytime purchase costs of less than $100/MWh and off-peak power purchases of less than $20/MWh. During the week ending June 9, prices for last-minute peak power at Western trading hubs fell to less than $55/MWh from a high of about $170/MWh earlier in the week.[7] This trend continued into the week ending June 16 with prices hovering between $50/MWh and $65/MWh at most of the Western power indexes.[8] In addition, prices for Western forward contracts are also down dramatically, with year 2002 forward transactions dropping from $127

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[7] Platts Power Markets Week, June 11, 2001. Prices of Spot Electricity, Week Ending June 9 – Daily On-Peak Indexes for Calif-Ore Border, Mid-Columbia, Palo Verde, Four Corners, North Path 15, and South Path 15 (Six Western Indexes).

[8] Megawatt Daily's Market Report, June 11 through June 14, 2001, for Six Western Indexes.

to $68/MWh, and 2003 forward contracts from $60 to $41 in the past month.[9]

While progress has been made in correcting market dysfunctions, the dysfunctions will not be fully corrected until additional load is moved from the spot market to longer-term contracts (a mixed portfolio of supply contracts) and the basic structural defect of inadequate supply in the West is corrected. The Commission therefore has determined that in order to ensure that rates for sales for resale in spot markets in California and the rest of the WSCC continue to fall within a zone of reasonableness, we will provide for price mitigation in California and throughout the remainder of the WSCC during reserve deficiency hours, *i.e.*, when reserves in California fall below 7 percent (in California, Stage 1 is called when reserves fall below this level).[10] As we found in our April 26 Order, this is when the level of demand approaches the amount of available supply and suppliers have the greatest opportunity to exercise market power. In addition, based on the comments received and based on prices that we recently have observed in California in hours where there is no reserve deficiency, we conclude that as an added measure in protecting customers, at this time

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[9] Platt's Power Markets Week, June 11, 2001, pp. 1, 16. As used throughout this document, "forward contracts" or "forward transactions" means any transactions with a future delivery that are entered into more than 24 hours before commencement of service.

[10] Our April 26 Order referred to Stage 1 being called by the ISO when reserves in California fall below 7.5%. The correct number is 7%.

it is also appropriate to provide for a type of price mitigation for spot market sales during other hours.

As noted, we find it appropriate to provide for price mitigation in the spot markets in California and throughout the West in reserve deficiency hours, *i.e.*, when reserves fall below 7 percent in California. As we found in our April 26 Order, at these times supply is scarce relative to demand and sellers have the greatest ability to dictate price. The price mitigation we will adopt for these hours will be based on market principles and will apply to California and the remainder of the West. Because there is no centralized clearinghouse for spot market sales in the WSCC other than in the ISO, and therefore no ability to develop a separate market clearing price for sales outside the ISO, we will apply the ISO market clearing price as the maximum price to all sales in the WSCC spot markets during reserve deficiency hours (Stage 1 or above) called by the ISO. We expect prices to be below this level to reflect the degree to which supply exceeds demand. Thus, our mitigation will apply to all sellers in the WSCC, including marketers and non-public utilities. It is critical to treat all sellers alike to remove the incentive to sell in one area versus another when a reserve deficiency is called by the ISO. We also will allow sellers other than marketers the opportunity to justify prices above the market clearing price during reserve deficiency hours and we will provide guidance on the specific showing that a seller must make.

In non-reserve deficiency hours, when supply is not scarce, prices should be disciplined sufficiently and should reflect an accurate measure of the

shortage confronting the West and provide a clear price signal to induce new supply. However, commenters are concerned that prices may remain high in hours when reserves are adequate. There is little doubt that regulators are ill-equipped to replicate the premiums which a functioning market assigns to a diminishing supply. It is precisely for this reason that, in our April 26 Order, we did not attempt to develop an administratively determined component for shortage and chose instead to rely on prices in non-reserve deficiency hours to send the correct price signal. Nevertheless, at this time, we will implement price mitigation in non-reserve deficiency hours as well. However, we will use a modified form of our present mitigation during non-reserve deficiency hours -- to ensure that prices will continue to induce new supply. We do so as a discretionary matter to provide an added measure to protect customers and the economies of the Western states, even though we view prices above the marginal cost of generation in these hours as a necessary reflection of the supply shortage at hand. Instituting mitigation in these hours will protect customers so that all energies and attention can be harnessed on the tasks of adding new supply and upgrading energy infrastructure and of completing California's transformation from 100% reliance on the spot market to a balanced portfolio of short, medium and long-term supply arrangements, as well as protecting neighboring states from undue harm. Later in this order, we direct the State of California and parties in the *San Diego Gas & Electric Company* complaint proceeding to settlement proceedings to complete the task of settling past accounts and structuring the new arrangements for

California's energy future. We will monitor our price mitigation in non-reserve deficiency hours to ensure that it is providing the incentives needed to correct the present market dysfunctions. We will adjust the mitigation, as needed, to induce long-term supply entry and the forward contracts required to support that entry.

The price mitigation we are adopting again relies on market solutions and mechanisms to the maximum extent possible. We will continue to use a single market clearing price derived from must offer and marginal cost bidding requirements for hours of reserve deficiency in California's organized spot market. We also will adapt these market clearing prices for use in all other hours, both in California's spot markets and the West's spot markets. Before describing in general the price mitigation that will be required in the ISO's markets and in the bilateral spot markets in California as well as the rest of the West, we believe it is important to enumerate the major considerations we have balanced in developing appropriate price mitigation.

- There is a critical interdependence among the prices in the ISO's organized spot markets, the prices in the bilateral spot markets in California and the rest of the West, and the prices in forward markets.

- Uniform price mitigation for California and the balance of the West should reflect the same essential competitive market principles, while recognizing the significant differences in the

structure of those markets. It also should eliminate incentives for so-called "megawatt laundering".[11]

• In exercising our statutory responsibility to ensure just and reasonable rates, *i.e.*, rates that fall within a zone of reasonableness, we must balance the need for immediate price relief for customers against the need for price signals to attract new supply and demand-side investments.

• As mentioned in our prior orders, the cornerstone of remedying the dysfunctions in the energy markets in the West and in bringing both spot and forward prices down over the last few months is eliminating California's excessive reliance on spot markets. While significant progress has been made, some 20 percent of California's load remains in the ISO's spot markets at peak periods.[12]

• Buyers and sellers need certainty and closure. To the extent possible, our price mitigation should have clear rules, should set prices before they are charged and should not subject prices to change or adjustment after financial settlement of the day's transactions. Similarly, it should not rely on costly and time consuming administrative processes to set, adjust or justify prices.

• Abuse of market power cannot and will not be tolerated. Sellers will be subject to losing their market based rates for engaging in anticompetitive

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[11] The term "megawatt laundering" describes behavior where a supplier schedules supply out of state and then re-imports that power to avoid a mitigated price.

[12] Recent data indicates that the reliance on the spot market is higher during off-peak periods.

conduct. Further, as a condition of continued authorization of market-based rates, public utility sellers in the WSCC must agree to refunds, with interest pursuant to 18 C.F.R. § 35.19a, of any overcharges resulting from anticompetitive bidding or behavior.

To satisfy these principles, the mitigation plan will consist of the following measures:

• We will retain the use of a single market clearing price with must offer and marginal cost bidding requirements for sales in the ISO's spot markets in reserve deficiency hours, *i.e.*, Stage 1 when reserves are below 7 percent in California. Sellers in the ISO's single price auctions will receive the hourly market clearing price. For sales outside the ISO's single price auctions (bilateral sales in California and the rest of the WSCC) we will apply this clearing price as a maximum price. Sellers outside the ISO's single price auction will receive the prices they negotiate up to this maximum price. There are, however, three adjustments to the clearing price methodology we have previously used.

First, marketers will be required to bid as price takers. This means that marketers cannot bid higher than the market clearing price.

Second, we will require sellers that own generation to submit bids during reserve deficiencies that are no higher than the marginal cost to replace gas used for generation (*i.e.*, what the seller would pay to procure gas at the last minute) plus variable O&M costs.

> Third, we instruct bidders to invoice the ISO directly for the cost to comply with emissions requirements and for start-up fuel costs and direct the ISO to file a rate mechanism to bill those costs over the entire load on the ISO system. These cost inputs have proven too varied to standardize in a single market clearing price.

Sellers other than marketers will be allowed the opportunity to justify bids or prices above the maximum prices and we will provide guidance later in this order on what sellers that seek to do so must demonstrate.

- For spot market sales, both in the WSCC and in California, in all non-reserve deficiency hours (*i.e.*, when reserve levels in the ISO exceed 7%), we will adapt the use of these market clearing prices. Eighty-five percent (85%) of the highest ISO hourly market clearing price established during the hours when the last Stage 1 (not Stage 2 or 3) was in effect will, absent justification, serve as the maximum price for the subsequent period. For example, if the highest hourly market clearing price during a Stage 1 is $140/MWh, spot prices in all subsequent non-reserve deficiency hours beginning when Stage 1 is lifted can be no higher than $119/MWh (*i.e.* 85 percent of $140/MWh). Sellers through the ISO's single price auction will receive the hourly market clearing price, but that clearing price will not exceed $119/MWh.[13] For example, if the market clears at

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[13] As we explain later, the ISO is required to add 10 percent to the market clearing price paid to generators for all prospective sales in its markets to reflect credit uncertainty. This adder will not be reflected in the market price for the rest of the WSCC.

$90/MWh all bidders in the ISO's auctions will receive $90/MWh for that hour. However, bids are limited to $119/MWh and, therefore, the clearing price during the period will never exceed $119/MWh. For sales outside the ISO's single price auctions (bilateral sales in California and the rest of the WSCC), sellers will receive the prices they negotiate up to the maximum price, in this example, up to $119/MWh. This maximum clearing price will remain in place until the next Stage 1 is declared and a new price is set. When that Stage 1 is lifted, 85% of the highest hourly market clearing price from that period will carry forward as the new maximum price. Sellers other than marketers will be allowed the opportunity to justify bids or prices above the maximum prices and we will later in this order provide guidance on what sellers that seek to do so must demonstrate.

- The mitigation plan will become effective beginning on the day following the date this order is issued.[14]

- We will continue to apply all price mitigation to non-public utilities as a condition of selling into the spot markets which are the subject of this order and as a condition of using the interstate transmission grid under our jurisdiction.

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[14] We will grant waiver of notice for the ISO's approved rate mechanism to recover the cost of emission requirements to be effective on the day following the date this order is issued. Absent a new reserve deficiency on the ISO's system declared before the effective date of the price mitigation outlined in this order, the market clearing price carried forward for non-reserve deficiency hours is $108.49/MWh (*i.e.* 85 percent of $127.64/MWh) (May 31, 2001, clock hour ending 1400).

- We will reaffirm that all public and non-public utilities who own or control generation in California must offer power in the ISO's spot markets. This requirement applies to any non-hydroelectric resource whether owned or under contract to the extent its output is not scheduled (or committed for minimum operating reserves) for delivery in the hour. We will also require all public and non-public utilities in the remainder of the WSCC to offer in the spot market of their choosing any non-hydroelectric resource whether owned or under contract to the extent its output is also not scheduled (or committed for minimum operating reserves) for delivery in the hour.

- The price mitigation will terminate on September 30, 2002.

- We will establish settlement proceedings at this Commission to address any and all issues to ensure that California completes the transformation of its load to long-term contracts. The Parties in the *San Diego Gas & Electric Company* complaint proceeding and the State of California are directed to participate in good faith in these proceedings.

We emphasize that the rate mitigation prescribed in this order is part of a series of steps the Commission has taken to remedy dysfunctions in California wholesale power markets. However, as we recognized in our first remedial order on December 15, 2000, many of the critical remedies that need to be taken fall either wholly or in part within the jurisdiction of the State of California. In particular, the consummation of additional long-term wholesale contracts, the development of demand side response

signals, the siting of new generation and transmission, and the construction of intrastate natural gas delivery infrastructure are critical to remedying the current market dysfunctions and are dependent on State action. We recognize the significant progress that California has made thus far and urge further implementation of these critical measures. We stand ready to assist in these efforts to the extent possible within our authority.

Finally, in taking action in today's order as well as in prior orders in these dockets, beginning on December 15, 2000, the Commission has taken careful, reasoned steps to fulfill its statutory responsibilities under the FPA. The Commission's statutory responsibility to set just and reasonable rates gives it broad authority to adapt its rate-making policies to the practical realities facing it. The Supreme Court ruled very early on that individual company cost-of-service rates were not the sine qua non of rate regulation, and that no single method of ratemaking is sacrosanct as the only means to reach the statutory goals. Rather, the value of any ratemaking policy is to be judged by its ability to meet the statutory goal of assuring that rates remain within a zone of reasonableness consistent with the maintenance of adequate service.

The ratemaking power granted the Commission under the FPA includes the authority to set the rules, regulations, practices, and contracts affecting rates, as well as the rates themselves. The Commission's orders related to the California markets have sought to establish a structure within which market forces will operate to achieve the statutory goal. In this order, the Commission

continues the efforts of its earlier orders to modify the existing market structure throughout the West to minimize the potential for market power abuse, and thus to protect against possible unjust and unreasonable rates, while, at the same time, maximizing the incentive for increased supply in the entire western region.

I. Background

In an order issued August 23, 2000, [15] the Commission instituted formal hearing proceedings under section 206 of the FPA to investigate the justness and reasonableness of the rates for energy and ancillary services of public utility sellers into the ISO and PX spot markets, and also to investigate whether the tariffs, contracts, institutional structures, and bylaws of the ISO and PX were adversely affecting the wholesale power markets in California. These proceedings were intended to investigate the significant increases in the prices for energy and ancillary services in the California market.

In the December 15 Order, the Commission found that the market structures and rules for wholesale sales of electric energy in California were seriously flawed and that these structures and rules, in conjunction with an imbalance of supply and demand in California, have caused, and continue to have the potential to cause, unjust and unreasonable rates for short-term energy under certain conditions. The Commission, therefore, established a variety of

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[15] *San Diego Gas & Electric Company, et al.*, 92 F.E.R.C. ¶ 61,172 at 61,606 (2000) (August 23 Order).

remedies for the California wholesale electric markets, which included, in part, elimination of the mandatory PX Buy-Sell requirement, establishment of penalties for underscheduling load, a requirement for an independent governing board for the ISO, and a requirement for the filing of generation interconnection procedures.

As an interim measure, the Commission also established a $150/MWh breakpoint under which public utility sellers bidding above the breakpoint receive their actual bids, but are subject to monitoring and reporting requirements to ensure that rates remain just and reasonable, including the potential for having to pay refunds for prices charged above the breakpoint.[16] The December 15 Order also required the development of a longer term mitigation plan to replace the interim breakpoint methodology by May 1, 2001.

On January 23, 2001, the Director of the Division of Energy Markets in the Office of Markets, Tariffs and Rates convened a technical conference to develop a plan to replace the interim breakpoint price.[17] Comments and reply comments on how to replace the interim break-point were filed with the Commission. In March 2001, Commission Staff issued a recommendation for prospective market monitoring and mitigation for the real-time electric

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[16] On March 9, 2001, the Commission issued an order directing public utility sellers to provide refunds (or offsets to amounts owed) or to provide cost or other justification for prices that exceeded the breakpoint. 94 F.E.R.C. ¶ 61,245 (2001), *reh'g pending*.

[17] 93 F.E.R.C. ¶ 61,294 at 61,983, 61,996-97.

market, and comments were filed on this proposal. The comments focused in particular on the method used for price mitigation and the periods when mitigation would be applied.

On April 26, 2001, the Commission issued its order adopting a prospective monitoring and mitigation plan for real-time California wholesale electric markets. The Commission's plan included the following elements:

It enhanced the ISO's ability to coordinate and control planned outages during all hours.

It required sellers with Participating Generator Agreements (PGAs), as well as non-public utility generators located in California that voluntarily make sales through the ISO's markets or use the ISO's interstate transmission grid (with the exception of hydroelectric power), to offer all their available power in real time during all hours.

It required public utility load serving entities to submit demand bids (identifying the price at which load will be curtailed) in the real-time market during all hours.

It established conditions, including refund liability, on public utility sellers' market-based rate authority to prevent anti-competitive bidding behavior in the real-time market during all hours.

It required the ISO to submit weekly reports on schedule, outage, and bid data for all hours so that Commission staff can continue to monitor generating unit outages and real-time prices.

It established a mechanism for price mitigation for all sellers (excluding out-of-state generators) bidding into the ISO's real-time market during a reserve deficiency, beginning at a Stage 1 alert, which is defined as having reserves of 7 percent or less. Under this mechanism, the Commission established a formula (based on gas-fired generation) that the ISO can use to establish the real-time market clearing price when mitigation applies. Higher bids were permitted if they could be justified.

In the April 26 Order, the Commission also established an inquiry into whether a price mitigation plan similar to the one for California should be implemented in the WSCC. The order invited comment on how such a plan should be structured.

The parties listed on Appendix A have filed for rehearing of the April 26 Order. A number of parties have filed motions for late intervention. While the Commission ordinarily does not permit late interventions after an order has been issued solely to file for rehearing, the Commission will grant the late interventions in this instance because of extensive overlap of the issues between the California-oriented parts of the April 26 Order and the West-wide investigation instituted in that order, and the fact that the April 26 Order authorized additional comments and interventions for purposes of the latter. Appendix B lists those filing comments in the section 206 proceeding with respect to the WSCC.

II. Discussion

As described earlier, the Commission is adopting a mitigation plan covering both California and the remainder of the WSCC during all hours for spot market sales. In the following sections, the Commission will address the rehearing requests and the West-Wide comments relating to this mitigation plan.

A. Outage Coordination

The April 26 Order found that in order to maintain sufficient generation capacity to meet market needs, the ISO must work with California generators to coordinate generating unit maintenance and outages, so that sufficient energy will be available when needed while also providing for reliable plant operation. The order required the ISO to make a tariff filing proposing a mechanism for outage coordination. The ISO made its compliance filing on May 11, 2001.

Most parties are in favor of such outage coordination. The CPUC, however, states that procedures relating to outage control and coordination are within the state's jurisdiction. CAC/EPUC contends that outage coordination may unreasonably burden QF facilities, because their outages are affected by their thermal host. DWR contends the outage controls should not be applied to hydroelectric generators. Duke, on the other hand, protests the ISO's proposal and asks the Commission to clarify the need for truly cooperative standards and procedures.

The ISO has the authority to coordinate and control generation outage schedules for resources

under PGAs. The Commission clarifies that only the ISO's outage coordination role will be extended to all other in-state generating facilities insofar as these generators must submit to the ISO maintenance schedules for their generating units. This will provide the ISO with the information necessary to maximize the efficient use of all in-state resources. For example, with this information, the ISO will be able to determine whether to schedule generation under its control based on when other generation resources will be out-of-service. The ISO, however, will not be authorized to schedule maintenance for units not under a PGA.

B. Selling Obligations

The mitigation plan requires those generators with PGAs, as well as non-public utility generators in California selling through the ISO markets or using the ISO's transmission lines, to offer the ISO all of their capacity in real time during all hours if it is available and not already scheduled to run. This must-offer obligation does not apply to power scheduled to run under bilateral agreements. The must-offer obligation does not apply to hydroelectric power because of its multi-purpose limitations (*e.g.*, irrigation, recreation, and power production). The must-offer obligation is designed to prevent withholding and thereby to ensure that the ISO will be able to call upon available resources in the real-time market to the extent that energy is needed. The basis for this requirement is that, under competitive conditions, a generator that has available energy in real time should be willing to sell that energy at a price that covers its marginal costs, since it has no alternative purchaser at that time. The rehearing

requests raise a number of issues that will be addressed below.

1. Applicability to Non-Public Utility Generators

A number of non-public utility entities request rehearing of the requirement that, because they make sales through the ISO's markets or use the ISO's interstate transmission grid (with the exception of hydroelectric power), they must offer all their available power in real time during all hours. They primarily argue that the Commission is overstepping its jurisdictional bounds by asserting jurisdiction over them in violation of section 205 of the FPA.

CMUA, SMUD, and others contend that the Commission lacks jurisdiction over municipalities and other state agencies. CMUA maintains that "as far back as 1998, CMUA members have voluntarily made units available to the ISO, have sold the ISO energy on a regular basis in response to reliability calls, and continue to sell to creditworthy buyers." CMUA at 8. CMUA contends that there is no evidence that such facilities are refusing unreasonably to sell in the ISO's markets.

The Commission denies the requests for rehearing. The Commission is not asserting jurisdiction over non-public utilities. Rather, as the Commission explained in the April 26 Order, it is exercising its conditioning authority to assure that all generators located in California, including non-public utility generators, that voluntarily sell into the ISO's spot market or that use the ISO's interstate transmission grid, offer their available

power in California.[18] As we stated in the April 26 Order, if a non-public utility makes sales into the ISO's markets over which the Commission has exclusive jurisdiction or uses the ISO-controlled interstate transmission facilities, it must abide by the same conditions that are applicable to public utilities.[19] On rehearing, parties have raised no arguments that warrant a different result. We cannot meet our statutory responsibilities under the FPA to ensure just and reasonable rates in the Western spot markets if we allow non-public utilities to participate in the ISO's markets and use interstate transmission facilities, while refusing to comply with the measures necessary to ensure the justness and reasonableness of the ISO's rates and terms and conditions of service. In short, the Commission cannot ensure just and reasonable rates under the FPA unless non-public utilities, which sell power into the ISO's market or use the ISO's transmission lines, are subject to the same market rules as public utilities.

CAC/EPUC contends that imposing the must-offer obligation and the mitigation plan on QF facilities conflicts with the regulatory scheme established under the Public Utility Regulatory Policies Act of 1978 (PURPA). QFs that engage in sales for resale in interstate commerce and/or the

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[18] *San Diego Gas and Electric Company, et al.*, 95 F.E.R.C. ¶ 61,115 at 61,356 (2001).

[19] *Id.* Since CMUA members already sell power on a regular basis to the ISO, and are assured of recovering their marginal costs when they run pursuant to the must-offer obligation, CMUA has not demonstrated that the Commission's actions would have an adverse effect on them.

transmission of electric energy in interstate commerce are public utilities and are therefore subject to the Commission's jurisdiction, although the Commission has exempted them from many provisions of the FPA.[20] However, because of the need for uniformity among all sellers, the Commission will not exempt QFs from the must-offer obligation and mitigation plan to the extent that QFs use the ISO's interstate transmission lines and make sales through the ISO's markets.[21] The exemptions from regulation granted pursuant to PURPA to QFs do not mean QFs must or should be exempted from the must-offer obligation.

2. Extent of the Must-Offer Obligation

The predominant issue raised on rehearing is how to apply the must-offer obligation to thermal generators with environmental limitations on their operations. The April 26 Order stated that generators would not have to run if doing so would violate their certificate or applicable law. But it required those units to run if it involved only the paying of additional amounts to obtain emission

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[20] Section 210(e) of PURPA states the Commission shall prescribe rules under which QFs are exempt, in whole or in part, from the FPA, PUHCA, and from state laws and regulations respecting rates or financial or or-ganizational regulation. 16 U.S.C. § 824a-3 (1994). The Commission exempted most QFs from portions of the FPA, 18 C.F.R. § 292.601 (2000), PUHCA, 18 C.F.R. § 292.601 (b) (2000), and from state laws and regulations respecting rates and financial and organizational regulation, 18 C.F.R. § 297.601 (c) (2000).

[21] CAC/EPUC filed a request to stay the application of the mitigation plan as applied to QFs. Given the resolution of the rehearing request, the request for stay is denied.

credits to permit them to run outside their emission limitations.

A number of rehearings request clarification that generators do not have to run if doing so would violate certificates or subject them to possible criminal penalties or fines. [22] Sellers further maintain that units with maximum run limitations have legitimate opportunity costs that the Commission has failed to recognize.[23] They recognize that the issue of energy limited units is complex,[24] but that the Commission's proposed emission credit adder does not fully take into account the costs imposed by forcing these plants to run whenever the ISO determines. They argue that they have traditionally managed these units to ensure that they run only during the times of the year when they are most valuable and that they should not be required to run at other times without adequate compensation for the revenues they forgo.[25] Mirant maintains that exempting hydroelectric power from the must-run requirement while not exempting environmentally-limited gas units is discriminatory. Sellers maintain that the Commission should either eliminate the must-offer requirement or permit generators to include in their bids an amount to capture the economic value of losing the ability to

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[22] Rehearing Requests by MID, M-S-R, NCPA, TANC.

[23] Rehearing Requests by Dynegy, Mirant, Reliant.

[24] *See* Rehearing Request by Reliant.

[25] For example, Dynegy maintains that forcing its units to run today will require it to use up emission credits allocated for the year 2003, and that it should be reimbursed for the lost opportunity of being unable to run that unit in the year 2003.

generate in later years. Reliant maintains that application of the must-offer obligation to energy limited units should be conditioned on expansion of California Executive Order D-24-01 to sales into the ISO, so that run-time limits would not apply to such sales.

Municipals [26] similarly argue the Commission needs to make allowances for the possibility that imposing a must run obligation on a generator may impose additional price or cost risk at later periods of time. NCPA maintains that it is required to make use of its thermal plants to meet its member-customer needs and is concerned that if it is forced to run during particular periods, it may not be able to meet the power needs of its members in later periods, if it is unable to obtain additional emission credits. It therefore requests clarification that it not be required to honor the must offer obligation unless it is able to obtain additional air pollution credits and that it be permitted to include those credits in any bid it makes into the ISO. Municipal generators request clarification that they do not have to make power available to the ISO when that power is being used to serve their own retail load or is required as reserves under interconnection agreements.[27] They contend that the April 26 Order was not clear whether the requirement to serve retail loads would be considered the equivalent of bilateral contracts. CAC/EPUC contends the must-offer obligation should not be applied to QF facilities, because it interferes with the QF's obligation to its thermal

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[26] Rehearing requests by NCPA, NRECA.

[27] MID, M-S-R, TANC.

host, which is governed by a contract or operational protocol. Calpine similarly argues that QF units with capacity committed to a utility are not subject to the must-offer even if it chooses not to operate at maximum capacity.

The Commission clarifies that generators should not be exempt from the must-offer requirement absent a showing that running the unit violates a certificate, would result in criminal violations or penalties, or would result in QF units violating their contracts or losing their QF status. Many of these issues are within the domain of the State of California, and we strongly urge California to modify current policies to enable generators to run during this period of scarce supply. For municipal generators the must-offer obligation applies only to available power remaining after the municipality satisfies its own retail load and contractual obligations. Given the shortage of power in California, all generators in California, including municipals, should not hold energy in reserve (over minimum acceptable levels) when the energy is needed to meet demand.

For QF facilities, like other generators, the must-offer obligation applies to energy that is available from generation that is not already contractually committed or would not violate its contractual obligation to its thermal host. With respect to Calpine's argument, a QF with capacity committed to a utility is, therefore, subject to the must-offer obligation if it chooses not to sell its maximum output to the utility. With respect to CAC/EPUC's contention, the Commission has granted waivers of the operating and efficiency standards so that QFs,

without jeopardizing their QF status, can generate power regardless of whether the host needs thermal energy.[28] Therefore, QF facilities will be expected to produce available energy regardless of whether the host requires thermal energy.

Due to the severity of the power shortage in the WSCC in general, and in California specifically, the Commission finds that the incurrence of expenses for obtaining additional emission allowances is not a valid reason to withhold available energy from the ISO's market. As discussed later in this order, the Commission is providing a mechanism for generators that incur emission related expenses to recover those costs through the ISO. Moreover, the Governor of California signed an Executive Order, D-40-01, allowing generators to exceed their emission runtimes without losing valuable future emission

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[28] *See San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 93 F.E.R.C. ¶ 61,238 at 61,772 & n.3 (2000) (December 8 Order)(granting temporary waiver of QF regulations); *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 93 F.E.R.C. ¶ 61,294 at 62,018 (December 15 Or-der)(extending waivers); *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 F.E.R.C. ¶ 61,272 at 61,970-71 (March 14 Order) (extending QF waivers); Further Order Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 95 F.E.R.C. ¶ 61,225 at 61,767-68 (2001) (May 16 Order)(waivers extended to entire WSCC and through April 30, 2002). In a second order issued on May 16, the Commission required California Utilities to provide interconnec-tion and transmission service to QFs pursuant to existing agreements to permit certain sales of QF power to third-party purchasers. *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 95 F.E.R.C. ¶ 61,226 (2001).

allowances, provided the energy is sold to DWR (or another California buyer) or dispatched by the ISO. Therefore, exceeding today's emission limits will not affect future limits. Thus, Executive Order D-40-01 moots all arguments on this issue insofar as California generators are concerned, including those of the municipal generators.

3. Withholding Generation for Operational Reasons

Mirant, Reliant, and Williams maintain that the must-offer obligation fails to recognize the need to withhold generation to cover the possibility that a unit will unexpectedly go offline. They take issue with the statement in the April 26 Order that a generator cannot be financially harmed from offering all of its units because the generator will only have to pay for the cost of replacement power, which is the same amount the generator would earn if the unit ran. They argue that, while this statement is true in theory, it does not apply to the ISO's markets because due to penalties in the ISO's tariff and the manner in which the ISO computes the cost of replacement energy, the generator would have to pay more for replacement energy than it would receive for the unit's bid in the market.

The must-offer obligation is crucial to ensuring that all capacity is in the market when needed and tariff provisions should not inhibit the fulfillment of this obligation. The Commission finds that during the periods mitigation is in effect, the current ISO tariff provisions in this regard are unjust and unreasonable, and, therefore, we will require the ISO to modify its tariff, to be effective the day after

the date of this order, so that the only penalty for having a unit forced out of service is the cost of replacement energy. The must-offer obligation modifies various market rules that existed when the current penalty provision was accepted for filing.

4. Other Issues

Several rehearing requests are concerned about generators avoiding the must-offer requirement through so-called "megawatt laundering" where a generator sells power to an out-of-state marketer, who then reimports that power to avoid a mitigated price.[29] The Commission clarifies that the must offer obligation applies to all sellers who own or control generation by contract. Moreover, the mere fact that a generator has a contract to provide power to a marketer does not exempt the generator from the must-offer obligation for energy that the marketer is not scheduling. As long as the generator has available energy, the generator has the obligation to offer that power into the ISO's auction market. Moreover, as described later, all marketers in the ISO's markets must now be price takers and cannot justify a bid higher than the mitigated price.

Dynegy maintains the must-offer obligation should be limited to emergency hours only. It argues that had this obligation been imposed at the time it purchased the plants, it would have paid a lower amount. It therefore contends the must-offer obligation unfairly changes the contractual conditions under which it purchased the plants. The

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[29] Rehearing Requests by ISO, CMUA, Metropolitan, NCPA, SMUD, San Diego, Edison.

Commission rejects Dynegy's argument. The must-offer obligation must be applied in all hours in order to ensure that all available capacity is in the market and that none is being withheld, except for the reasons previously discussed. Moreover, mitigation is now being applied in all hours, so the must-offer obligation must also be applied to all hours.

LADWP requests clarification that the must-offer and price mitigation aspects of the order do not apply to its sales of energy under bilateral contracts or to sales or purchases that are scheduled to run in real-time pursuant to a bilateral contract. All public and non-public utilities which control generation in California must offer power in the ISO's spot markets. This requirement applies to any non-hydroelectric resource whether owned or under contract only to the extent its output is not scheduled for delivery (or committed for minimum operating reserves) in the hour. All public and non-public utilities in the remainder of the WSCC must offer in a spot market of their choosing any non-hydroelectric resource whether owned or under contract to the extent its output is not scheduled for delivery (or committed for minimum operating reserves). All sales in these spot markets are subject to the price mitigation established in this order.

The rehearing requests raise issues with respect to the effect of the must-offer obligation on the ISO's authority to curtail exports of power to other markets. Reliant and Mirant maintain the must-offer requirement should supplant the ISO's curtailment authority under its tariff. Reliant contends the curtailment authority is unnecessary now that California generators will be bidding all

available supply into the real-time market. Williams maintains the ISO should compensate generators for curtailments. SDG&E, on the other hand, contends the Commission should permit the ISO to curtail in-state generation destined for other states.

The Commission is not persuaded to change the ISO's curtailment authority at this time. Since Reliant maintains that this authority is no longer needed as a result of the must-offer obligation, it has not demonstrated how it is harmed by leaving the current authority intact. The price mitigation adopted in this order establishes the same price throughout the WSCC as in California, and therefore does not provide a financial incentive for generators to sell energy outside of California. Parties may renew objections to this authority in future proceedings if they can establish discernible harm.

C. Demand Response

The April 26 Order provided that beginning on June 1, 2001, each public utility purchasing electricity in the ISO's real-time market is required to submit demand-side bids that will indicate the price at which load will be curtailed and will identify the load to be curtailed.

The ISO requests clarification as to whether the demand response mechanism is voluntary or mandatory. If voluntary, the ISO maintains that it is already implementing a number of demand response mechanisms. If the requirement is mandatory, a number of rehearing requests contend that it is insufficient to solve the problem,[30] and is technically

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[30] *See* Rehearing Request by CMUA

infeasible, in the short-run, because there is no mechanism for obtaining accurate demand response signals from all customers. In addition, the ISO cannot currently curtail power to individual loads.[31] Parties assert that load serving entities should not be required to simply guess at the prices its customers are willing to pay. SDG&E, for example, contends that the CPUC did not permit it to act as an aggregator for demand responses, and accordingly it would simply be guessing at what price its customers are willing to pay. San Francisco maintains that curtailing retail customers is anathema to the Load Serving Entities' (LSEs') duty to serve. A number of requests contend that demand response is a state concern, and the Commission has no authority to indirectly regulate retail customers. Others contend that since the DWR is not a public utility, it would not be covered by the demand response mechanism in any event.

On the other hand, generators maintain that a demand response mechanism is crucial to establishing a viable market and is needed to provide generators with appropriate scarcity rents.

The Commission continues to believe that establishing a demand response mechanism is crucial to establishing a robust market.[32] Without a demand response mechanism, the ISO is forced to

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[31] Rehearing Requests by ISO, DWR, San Francisco.

[32] *See* Chandley, Harvey, & Hogan, Electricity Market Reform in California, at 25 ("The least controversial reform of market design would be to implement all the changes needed to allow for demand side response in the face of higher prices." (Attached to November 22, 2000 Comments of SDG&E).

work under the assumption that all customers have an inelastic demand for energy and will pay any price for power. There is ample evidence that this is not true. Many customers, given the right tools, can and will manage their demand. Such an assumption inevitably leads to higher prices during times of shortage, since high supply bids do not lead to a reduction in power purchased. A working demand response program puts downward pressure on price, because suppliers have additional incentives to keep bids close to their marginal production costs and high supply bids are more likely to reduce the bidder's energy sales.[33] Appropriate price signals to customers thus helps to mitigate market power as high supply bids are more likely to reduce the bidders' energy sales. Suppliers thus have additional incentive to keep bids close to their marginal production costs. Demand-side price-responsive bids will also help to allocate scarce supplies efficiently.

Indeed, without demand-side price responsiveness, there can be no market mechanism for ensuring that scarce supplies are allocated to the highest valued uses during shortages. However, based on the technical impracticalities raised in the rehearing comments, the Commission does not find that the demand response requirement should be implemented at this time. Because the development

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[33] Already conservation has helped to reduce demand. See Peter Behr, "*Fears of an Energy Crisis Begin to Dim, Consumption Cuts Help Lower Prices for Gasoline, Natural Gas and Electricity*," Washington Post, April 8, 2001, at E1 (California has reduced demand 8%). A properly designed demand side response program could improve this performance even more markedly by providing price incentives for reduction.

of demand response is so critical, we expect that buyers in the ISO's market will submit demand bids as soon as demand bidding becomes technologically feasible. Meanwhile, the Commission will continue to monitor developments in California to determine whether additional Commission action is needed. The ISO must include in its quarterly reports a discussion of all demand response changes that have been implemented. If state programs for demand response do not develop, the Commission expects the ISO to enhance its own programs.[34]

Public utilities along with California officials also must actively pursue such approaches to achieving a viable demand response program. As SDG&E points out, LSEs can effectively act as aggregators for retail demand response. SDG&E and other public utilities should continue to pursue demand response initiatives and are required to file with the Commission by September 14, 2001 a report of the progress that is being made in establishing these mechanisms and any difficulties they have encountered.

To help facilitate these initiatives, the Commission intends to conduct a staff technical conference to explore how demand response can be increased. The first purpose of the conference will be for the Commission to familiarize itself with the

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[34] *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 F.E.R.C. ¶ 61,272 at 61,972-73(March 14 Order) (DSM programs); Further Order Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 95 F.E.R.C. ¶ 61,225 (2001) (May 16 Order).

status and availability of conservation, demand-side management, and other innovations to help communicate real-time price signals to consumers, including the software and metering necessary to support such programs. The second purpose will be to explore how these programs can be implemented. At the conclusion of the conference, the Commission will reconsider the feasibility and schedule for a demand bidding requirement and its use in establishing prices in the ISO's market.

D. Price Mitigation for California and the WSCC

The April 26 Order applied price mitigation to periods of reserve deficiency, defined as those periods beginning with Stage 1. Under the approach set forth in the April 26 Order, the ISO would conduct a market clearing auction for its real-time markets. During periods of reserve deficiency, however, the ISO would calculate a marginal cost bid for each generator by using a proxy for the gas costs, emission cost, and operation and maintenance (O&M) expenses. The ISO would then use the bid of the last unit dispatched to establish the market clearing price. The justification for this approach is that as reserves are reduced, all sellers are aware of how tight supplies are relative to the amount they have to offer. Thus, sellers have an incentive to offer supply at prices above that which they would ordinarily bid. Because of the imbalance of supply and demand, these prices may not be just and reasonable. The Commission, however, did not impose mitigation during periods of reserve sufficiency because there is less risk that prices would exceed those charged in a competitive market. During reserve sufficiency conditions a supplier has

less of an incentive to bid a high price, because it cannot be sure it will be dispatched, since other generators may offer lower bids.

Many rehearing requests, as well as comments in the West-Wide proceeding, contend the Commission should have extended mitigation to cover all hours. They contend that evidence from a number of studies shows that sellers have been able to exercise market power during all hours. They contend that the Commission has the obligation under the FPA to assure just and reasonable rates in all hours.[35] Duke Energy and other generators insist that the record does not show that market power has been exercised.

As described earlier, the Commission here is instituting a two-part approach to price mitigation for spot markets to cover all hours for California and the WSCC. Because these markets are integrated, the mitigation proposal must establish the same prices for all markets in order to prevent arbitrage where power is diverted from the lower priced market to the higher priced. The mitigation plan further has to recognize the differences between the California market, which has an organized auction, and the remainder of the WSCC, which does not have a similar centrally organized market. The plan adopted by the Commission is tailored to provide a uniform scheme of mitigation that at the same time recognizes the differences between these markets. During non-reserve deficiency hours in California,

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[35] Rehearing Requests by ISO, CEOB, CMUA, Assembly, City of Anaheim, *et al.*, CFA, Metropolitan, PG&E, NCPA, SDG&E, San Diego, San Francisco, Seattle, Edison, SCWC.

the Commission will adapt the ISO's market clearing price for spot market use West-wide.

The purpose of instituting this dual plan is to stabilize the market in the short-term and permit California time to repair its market mechanisms. The shortage of hydroelectric power together with the failure to build efficient generation is clearly a major part of the problem. This has been exacerbated by the imbalance between high wholesale prices and low retail prices, which do nothing to dampen demand. What is clear, however, is that a major contributor to the high prices was the deficient market mechanisms initially established by California, and approved by the Commission, that have resulted in a dysfunctional marketplace both in California and the remainder of the West. The mitigation plan established in this order, in effect, provides breathing room for the markets to right themselves.

The ISO, CPUC, and PG&E further contend that mitigation should apply outside of the ISO's Imbalance Energy market and should include its Day-Ahead and Hour-Ahead markets for ancillary services and its congestion management market. The Commission's order providing clarification and preliminary guidance addressed these issues.[36]

Several rehearing requests contend the mitigation should apply to all bilateral contracts.[37]

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[36] *San Diego Gas & Electric Company, et al.*, 95 F.E.R.C. ¶ 61,275 (2001).

[37] Rehearing Requests by CPUC, City of Anaheim, *et al.*, PG&E.

The section 206 proceeding involving the ISO was limited to the ISO's and PX's real-time markets and did not extend to bilateral markets.[38] As discussed, however, in the Commission's section 206 investigation of the non-ISO spot markets in the WSCC, we have determined it appropriate to also apply mitigation to the bilateral spot markets in the WSCC, including California. Parties have not provided justification for extending the scope of our investigation or the mitigation to bilateral transactions other than spot markets. Moreover, any mitigation applied to the ISO's real-time markets will, over time, impact bilateral and forward markets as well.

A number of parties argue that the Commission's market monitoring and mitigation plan will not result in just and reasonable rates as required by the Federal Power Act, and the Commission should either return to individual cost-of-service rates or condition the continued use of market-based rates on effective mitigation measures.[39] The CPUC maintains that because the Commission found rates to be unjust and unreasonable, the Commission is required to fix by order just and reasonable rates. It declares that "where, as here, market power is pervasive through the industry in the west, FERC must impose cost of service pricing."[40] PG&E asserts

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[38] *San Diego Gas & Electric Company, et al.*, 93 F.E.R.C. ¶ 61,121, at 61,349 (2000) (limited proceeding to real-time markets).

[39] *See, e.g.*, *ISO, CEOB, CPUC, Assembly, CFA, PG&E, San Francisco, Seattle*, and *Edison*.

[40] CPUC Request for Rehearing at 7.

that the Commission should immediately suspend the existing market-based rates of all sellers in the West and that the Commission should require immediate cost of service filings.[41] CEOB maintains that "the Commission has no choice but to engage in cost-based ratemaking, or to adopt a sweeping mitigation scheme throughout the WSCC to ensure just and reasonable rates . . . ."[42]

Since determining that the market structure and rules for wholesale sales of electric energy in California had caused, and continued to have the potential to cause, unjust and unreasonable rates for short-term energy during certain times and under certain conditions, the Commission has ordered changes to the market structure and rules to assure that future rates would be just and reasonable.[43]

After carefully considering the record, the Commission reaffirmed its general finding that, as a result of the seriously flawed electric market structure and rules for wholesale sales of electric energy in California, unjust and unreasonable rates were charged, and could continue to be charged during certain times and under certain conditions, unless certain targeted remedies were implemented.

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[41] PG&E Request for Rehearing at 13-15.

[42] CEOB Request for Rehearing at 4.

[43] FERC's remedial measures "must be construed as a whole in assessing FERC's compliance with FPA § 206". *In re California Power Exchange Corp.*, 245 F.3d 1110, 1120 (9th Cir. 2001).

San Diego Gas & Electric Co., et al. 93 F.E.R.C. ¶ 61,294 (2000)("December 15 Order").[44]

The following remedies were adopted by the Commission in order to correct the specific flaws identified through the investigatory and hearing process: (1) because "the mandatory participation requirement . . . [was] producing rates that [were] not just and reasonable during certain periods," the Commission eliminated the requirement that the IOUs sell all of their generation into and buy all their energy needs from, the PX; (2) recognizing that it could assure the justness and reasonableness of California wholesale markets prices only by eliminating the PX's exclusive mandatory exchange, the Commission terminated the PX's wholesale tariffs; (3) to eliminate market participants' chronic underscheduling with the ISO, which jeopardized ISO system operations and created a strong sellers' market and higher prices in the most volatile spot market (real-time imbalance), the Commission required market participants to preschedule 95 percent of their load, with penalties for scheduling deviations in excess of five percent of an entity's

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[44] The Commission has freedom, "within the ambit of [its] statutory authority, to make the pragmatic ad-justments which may be called for by particular circumstances. " FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 586 (1942); *In re California Power Exchange Corp.*, 245 F.3d at 1120 . FPA § 309, 16 U.S.C. § 825h, gives the Commission the necessary flexibility to take unusual remedial action in appropriate circumstances. *See* Permian Basin Area Rate Cases, 390 U.S. 747, 776 (1968) (applying NGA § 16, the counterpart of FPA § 309, the Court held that "the Commission's broad responsibilities . . . demand a generous construction of its statutory author-ity."); *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 642 (1972) (same).

hourly load requirements and disbursements of penalty revenues to all loads scheduled accurately; (4) mindful that eliminating the mandatory buy/sell requirement would move a considerable amount of load into the forward long-term markets all at once, the Commission established, effective for one year, an advisory benchmark for pricing five-year contracts; (5) because of concerns about the independence and effectiveness of the ISO governing board, the Commission ordered that the current stakeholder governing board be replaced by a non-stakeholder board composed of members independent of market participants; and (6) the Commission required the ISO and the IOUs to file generation interconnection procedures to facilitate the interconnection of new generators or existing, upgraded generators, thereby enhancing system reliability and reducing price volatility.

To further assure that prices in the ISO's and PX's spot markets are just and reasonable, the Commission directed that a technical conference be held to develop a comprehensive and systematic monitoring and mitigation program to be submitted to the Commission by March 1, 2001. Until that date, the Commission established an interim $150/MWh breakpoint for spot market sales. On an interim basis, all public utility sellers bidding at or below $150/MWh would receive the market clearing price up to $150/MWh, and only those sellers bidding above $150/MWh would receive their actual bid price. However, all accepted bids above $150/MWh were required to be reported to permit proper monitoring and review by the Commission.

On April 26, 2001, the Commission adopted a prospective monitoring and mitigation plan for real-time California wholesale electric markets which replaced that previously in effect. The Commission's plan: (1) enhanced the ISO's ability to coordinate and control planned outages; (2) required sellers with PGAs, as well as non-public utility generators located in California that voluntarily make sales through the ISO's markets or use the ISO's interstate transmission grid (with the exception of hydroelectric power), to offer all their available power in real time during all hours; (3) required public utility load serving entities to submit demand bids (identifying the price at which load will be curtailed) in the real-time market during all hours; (4) established conditions, including refund liability, on public utility sellers' market-based rate authority to prevent anticompetitive bidding behavior in the real-time market during all hours; (5) required the ISO to submit weekly reports on schedule, outage, and bid data for all hours so that Commission staff can continue to monitor generating unit outages and real-time prices; (6) established a mechanism for price mitigation for all sellers (excluding out-of-state generators) bidding into the ISO's real-time market during a reserve deficiency, beginning at a Stage 1 alert (*i.e.*, when reserves are below 7 percent). This mechanism provided a formula (based on gas-fired generation) for the ISO to use to establish the real-time market clearing price when mitigation applies. Higher bids were permitted if they could be justified.

In this order, the Commission is expanding the market monitoring and mitigation plan to produce spot market prices in all hours that are just and

reasonable and emulate those that would be produced in a competitive market. We find that a return to individual cost-of-service ratemaking is unwarranted. As addressed above, the market changes and monitoring procedures already implemented by the Commission have improved the wholesale power markets in California. This order continues that effective course. In contrast, cost-of-service ratemaking tends to penalize more efficient generators and not provide proper incentives for generators to become more efficient, since each generator's price is dependent on its costs. [45] Moreover, individual cost-of-service rates may not provide generators with appropriate scarcity rents. Establishing individual cost-of-service rates is also difficult with respect to spot markets. For peaking units, decisions would need to be made about the number of projected MWhs over which to spread costs. Generators also would have to make filings establishing their rate base, acceptable rate of return, and cost-of-service, possibly including trackers for volatile costs such as gas and emissions fees. Resolving the issues involved in such filings would be protracted and would not provide price certainty to the market. We do provide for any generator unable to work within the revised mitigation framework the opportunity to apply for cost-based rates for the duration of the plan.

The monitoring and mitigation plan adopted by the Commission in this order satisfies the requirements of the FPA. In particular, FPA Section

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[45] *See National Rural Telecom Association v. FCC*, 988 F.2d 174, 178 (D.C. Cir. 1993).

206 allows the Commission to determine whether "any rate, charges, or classification . . . or any rule, regulation, practice, or contract affecting such rate, regulation or classification" is unjust or unreasonable, and to fix "the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force." 16 U.S.C. § 824e(a)(1994). In this order, as in our earlier orders related to this matter, the Commission has examined the rules, regulations, practices and contracts that are currently being used, and made changes that are necessary to prevent possible abuses that could lead to unjust and unreasonable rates.

The focus on changes to the existing market structure, rather than on setting cost-of-service rates for individual sellers, is consistent with the case law. As the Supreme Court made clear, it "has never held that the individual company cost-of-service method is a sine qua non of natural gas [or electric] rate regulation."[46] Nor has the Court limited ratemaking agencies "to the service of any single regulatory formula; they are permitted, unless their statutory authority otherwise plainly indicates, 'to make the pragmatic adjustments which may be called for by particular circumstances.'" [47] The success of a particular ratemaking approach is judged by "the result reached not the method employed."[48] The end

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[46] *Wisconsin v. FPC*, 373 U.S. 294, 309 (1963).

[47] *Permian Basin Area Rate Cases*, 390 U.S. 747, 776-77 (1968).

[48] *FPC v. Hope Natural Gas Company*, 320 U.S. 591, 602 (1944).

result of any ratemaking order must be to provide rates within a zone of reasonableness that "take fully into account the probable consequences of a given price level for future programs of exploration and development".[49] As that language makes clear, a cost-based inquiry alone would not be sufficient in these circumstances to fulfill the statutory duty. Rather, the Commission must consider the broader public interest, and, in particular, the interest in setting rates that will assure adequate supply.[50]

The Commission is free to adopt market-based rates.[51] In adopting market-based rates, the Commission must: (1) provide a clear and reasoned analysis of the need for market-based pricing to

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[49] *Permian Basin*, 390 U.S. at 797; *see Atlantic Refining Co. v. Pub. Service Comm.*, 360 U.S. 378, 388 (1959) (same)

[50] *Permian Basin*, 390 U.S. at 796-97; *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 317-18 (1974); *Consumers Union v. FPC* 510 F.2d 656, 660 (D.C.Cir. 1974); *see also Central Iowa Power Coop v. FERC*, 606 F.2d 1156, 1165 n. 28 (D.C.Cir. 1979) (affirming rate based on "need to stimulate short-term purchases of excess capacity in lieu of adding new capacity and to discourage reliance on emergency energy when units are less than efficient").

[51] *E.g., Louisiana Energy and Power Authority v. FERC*, 141 F.3d 364 (D.C. Cir. 1998); *Elizabethtown Gas Company v. FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993); *see also Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 968 (D.C.Cir. 2000). Other agencies subject to ratemaking regimes similar to that of the FPA have been upheld in adopting a market-based, rather than a cost-of-service, approach to setting rates. *See Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 737 F.2d 1095, 1137 (D.C. Cir. 1984); *Nat'l Rural Tel. Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993); *Consolidated Rail Corp. v. U.S.*, 812 F.2d 1444 (3d Cir. 1987); *Potomac Elec. Power Co. v. ICC*, 744 F.2d 185 (D.C.Cir. 1984).

promote the statutory objectives of the FPA; (2) support its decision with substantial evidence; and (3) assure that the resultant market-based rate falls within a "zone of reasonableness."[52] Having adopted a market-based approach for the California market, nothing requires the Commission to revert to a cost-of-service ratemaking approach whenever it finds flaws in the market structure. *See Environmental Action v. FERC*, 996 F.2d 401, 411(D.C. Cir. 1993) (finding that the Commission "has never bound itself to a rule requiring either rigid regulation or textbook markets"). The courts have also approved the use of marginal cost pricing as an appropriate regulatory tool. *Town of Norwood v. FERC*, 962 F.2d 20, 22 (D.C. Cir. 1992) (stating "one of the best-established precepts of classical economics: social welfare is maximized when the marginal cost of purchasing any commodity is equivalent to the marginal cost of producing it.") *See Electricity Consumers Resources Council v. FERC*, 747 F.2d 1511 (D.C. Cir. 1984) (same).

Rather, in such circumstances, the presence of a monitoring program under which the Commission can take appropriate action to restructure the market is key. For example, in *Elizabethtown*, the

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[52] *In Farmers Union Central Exchange, Inc. v. FERC*, 734 F.2d 1486 (D.C. Cir. 1984), *cert. denied sub nom. Williams Pipe Line Company v. Farmers Union Central Exchange, Inc.*, 469 U.S. 1034 (1984), the court explained that it may not invalidate "rate orders that fall within a 'zone of reasonableness,' where rates are neither 'less than compensatory' nor 'excessive.'" It added that "when FERC chooses to refer to non-cost factors in ratesetting, it must specify the nature of the relevant non-cost factor and offer a reasoned explanation of how the factor justifies the resulting rates."

court found that the continued "exercise of the Commission's NGA] § 5 authority . . . to assure that a market (*i.e.*, negotiated) rate is just and reasonable" sufficiently safeguards against abuses under a market pricing approach. 10 F.3d at 870. Similarly, in *Environmental Action*, the court approved the combination of price ceilings and complaint procedures as sufficient safeguards because that would allow "competitive forces, not market power, [to] determine most transaction prices . . . and serve to extend competitive pricing to situations where market power might otherwise prevail." 996 F.2d at 413.[53]

Through the remedies ordered in earlier orders and herein, the Commission determined and is continuing to determine pursuant to FPA Section 206 "the just and reasonable rate, charge, classification, rule, regulation, practice, or contract" to replace flawed structure and rules, and to "fix the same by order." The Commission was not obliged to set seller-specific cost-based rates to resolve the perceived problems, given its continuing monitoring and review of the situation which offers adequate safeguards against potential market abuse. The mitigation plan adopted in this order relies on market solutions and mechanisms to the maximum extent possible, consistent with the Commission's

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[53] The courts have approved market pricing for other agencies if available remedies assure that market power will not be abused. *E.g., Ford Motor Co. v. ICC*, 714 F.2d 1157, 1158-59 (D.C. Cir. 1983); *Arkansas Power & Light v. ICC*, 725 F.3d 716, 718 (D.C. Cir. 1984); *Coal Exporters Ass'n v. U.S.*, 745 F.2d 76, 80 and 90 n. 18 (D.C. Cir. 1984); *Arizona Public Service Co. v. U.S.*, 742 F.2d 644, 647 (D.C. Cir 1984).

statutory responsibilities to maintain just and reasonable rates. The revisions made in this order are designed to provide a structure that will minimize potential market power abuses, thus lowering customer rates, while also encouraging adequate supply in the market for the immediate future.

E. ISO Market Clearing Auction During Periods of Reserve Deficiency

Under the April 26, 2001 mitigation plan, each gas-fired generator in California (both those signing PGAs and covered non-public utility gas-fired generators) will file with the Commission and the ISO (on a confidential basis) the heat rate and emission rate for each generating unit. The ISO would use these heat rates to calculate a marginal cost for each generator by using a proxy for the gas costs, emission cost, and a $2.00/MWh adder for O&M expenses. The gas cost proxy was based on an average of the daily prices published in Gas Daily for all California delivery points. The emission cost was to be calculated by the ISO using emissions costs from Cantor Fitzgerald Environmental Brokerage Services and the emissions rate for the unit. All generators would be paid a single market clearing price reflecting the last unit dispatched calculated using the proxy prices.

Rehearing requests addressed a number of elements of this plan. Based on those rehearing requests, the Commission, as discussed in detail below, is modifying the method of determining the cost for gas, the treatment of emission costs, and the O&M adder. The Commission will address below the

rehearing requests with respect to the ISO auction mitigation plan.

1. Use of the Marginal Cost of the Last Unit Dispatched

PG&E maintains the Commission should not determine price using the marginal cost of the last unit dispatched. Instead, it maintains the Commission should use the heat rate of the average cost unit. PG&E maintains that in a competitive market, each unit of generation would recover only its own marginal costs.

In a competitive market, however, each generator would not receive only its own marginal cost, as PG&E asserts. Competitive markets clear at a single price, which is effectively set by the marginal cost of the last unit produced. All more efficient units will receive the same price, which creates an incentive for firms to increase their efficiency. Therefore, using the marginal cost of the least efficient generating unit dispatched best replicates prices in a competitive market. In 1998 and 1999, when the California spot markets were producing average annual wholesale prices of $29 and $31 per MWh, respectively, the marginal cost of the last unit dispatched set these prices. The mitigation plan simply returns the market to the competitive principles that existed in 1998-99.

The ISO contends that inflexible units such as combustion turbines should not set the proxy price, because they do not have the flexibility to be dispatched on a 10-minute basis. The Commission's mitigation plan is based on the payment of the marginal cost of the last generator dispatched to

serve the last increment of load. Therefore, if a combustion turbine is the last generator dispatched, its bid should establish the market clearing price.

2. Calculation of Market Clearing Price

Rehearing requests raise a number of issues with respect to the calculation of the mitigated price, particularly with respect to the gas prices and emission prices used.

a. Gas Costs

Under the Commission's April 26, 2001 approach, gas costs used in the formula are determined by an average of reported daily spot gas prices at California delivery points. The requests for rehearing raise a number of issues regarding the use of gas costs to determine the market clearing price. Several rehearing requests contend that the Commission should not use proxy prices, but should use actual gas (and emissions) costs for generators.[54] Others contend that using the reported gas prices overstates gas costs, because generators have a portfolio of gas supplies and are not buying all their gas at spot prices.[55] The ISO and CEOB contend that to better reflect supply portfolios, the Commission should use monthly bid-week gas prices, rather than daily spot prices. The ISO recommends the Commission use bid-week monthly prices from Gas Daily, but for only three points in California, Malin, SoCal Gas (large packages), and PG&E city-gate

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[54] Rehearing Requests by NCPA, Seattle, Edison.

[55] Rehearing Requests by ISO, CPUC, Assembly, Metropolitan, PG&E, SDG&E, San Diego, San Fran-cisco, Edison.

(excluding PG&E large packages). Others contend that using the average gas price does not accurately reflect the marginal costs of generators, because gas prices are higher at the Southern California points than Northern California points.[56] They suggest that the gas proxy price should be revised to more accurately reflect the marginal costs of each generator.

The Commission's mitigation plan is designed to establish generators' bids and market prices up-front. Using actual costs to determine marginal cost, as some suggest, would not establish generator bids, but would require an after-the-fact review of whether a generator's bid actually reflected its marginal cost. Using actual costs, therefore, would not provide price transparency, and would be administratively infeasible because it would require a constant reevaluation of every generator's bids.

The Commission will revise the spot gas prices to be used in the formula to accord with the requests by the ISO to establish the proxy gas cost for determining marginal costs.[57] The ISO will be required to average the mid-point of the monthly bid-week prices reported by Gas Daily for three spot market prices reported for California.[58] This price

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[56] Rehearing Requests by CEOB, Dynegy, Reliant, Williams.

[57] *See Norwood v. FERC*, 962 F.2d 20, 22 (D.C. Cir. 1992) (one of the best established principles of classical economics: social welfare is maximized when the marginal cost of purchasing any commodity is equal to the marginal cost of producing it); *Electricity Consumers Resources Council v. FERC*, 747 F.2d 1511 (D.C. Cir. 1984).

[58] The three points are SoCal Gas (large packages), Malin, and PG&E city-gate.

represents a reasonable proxy for the marginal cost that generators will incur, since they can pre-buy their gas requirements for the month at this price.[59]

The Commission recognizes that, as Reliant and Dynegy point out, spot gas prices in southern California off of SoCal Gas's system exceed other spot prices in California. The staff of the California Energy Commission has recognized that a chief contributor to the high natural gas prices in southern California is the deficit of intrastate capacity on the SoCal Gas system.[60] It reports that the interstate delivery capability exceeds the ability of SoCal Gas to receive that gas by 300 MMcf/d. It concludes that:

> this deficit in receipt capacity contributes to the high natural gas prices in California and the tight supplies to meet natural gas demand by electric generators.[61]

Another contributing factor to the high gas prices is the inability of generators and other shippers to acquire firm transportation rights on SoCal Gas's backbone system and SoCal Gas's system of allocating transportation on its backbone system,

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[59] The average for June as reported in the Gas Daily Price Guide is $9.10. The bid-week monthly index prices are SoCal Gas (large packages) $11.71, Malin $5.98, PG&E Citygate $9.61.

[60] California Energy Commission Staff Draft Report, Natural Gas Infrastructure Issues, Docket No. 00-CEO-Vol -I, at 43 (May 17, 2001).

[61] California Energy Commission Staff Draft Report, Natural Gas Infrastructure Issues, Docket No. 00-CEO-Vol -I, at 43 (May 17, 2001).

which leads to great uncertainty in scheduling gas supplies from interconnecting pipelines. This Commission recently has taken action to help improve the certainty of nominations on interstate pipelines into southern California, [62] but in the absence of scheduling changes on SoCal Gas, the Commission's changes to interstate scheduling practices cannot remove this uncertainty altogether. The Commission staff held a technical conference on May 24, 2001 to examine the problems in California gas infrastructure in which many participants continued to express concern about the lack of intrastate capacity on SoCal Gas and the difficulty in achieving certainty in scheduling gas supplies due to SoCal Gas's allocation procedures. [63] The Commission also is continuing to pursue efforts to try to dampen these higher prices into southern California. For example, the Commission recently issued orders requesting comment on whether to establish reporting requirements to create greater transparency in the gas market for southern California and whether imposing a price ceiling on capacity release transactions would have an effect on dampening prices.[64] The Commission will continue

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[62] *Amoco Energy Trading Corp. v. El Paso Natural Gas Company*, 93 F.E.R.C. ¶ 61,060 (2000), *aff'd* 94 F.E.R.C. ¶ 61,225 (2001).

[63] *California Natural Gas Transportation Infrastructure*, Docket No. PL01-4-000.

[64] Order Proposing Reporting Requirement on Natural Gas Sales to California Market and Requesting Comments, 95 F.E.R.C. ¶ 61,262 (2001); *San Diego Gas & Electric Company, et al.*, 95 F.E.R.C. ¶ 61,264 (2001).

to monitor the situation in California to see whether further efforts are needed.

In addition to the dysfunction in southern California gas markets, the Commission cannot be certain that the daily SoCal Gas (large packages) spot price represents the actual cost of southern California generators. Gas Daily and the other reporting services do not indicate what volume moves at these prices, how much volume may be sold at lower prices in non-spot markets, and whether generators may be able to use other options to protect themselves against such higher prices.

Because of these concerns about the supplies coming into California from SoCal Gas, the Commission does not find it reasonable to base the market clearing energy price for California and the remainder of the WSCC solely on the southern California spot price for gas. Instead, the most equitable way of handling this issue is to use the approach described above. Under the mitigation plan adopted in this order, individual southern California generators are permitted to justify bids above the market clearing price so long as they can show their entire gas portfolio justifies such a bid.

b. Emission Costs

The April 26 Order stated that the emission cost would be calculated by the ISO using emissions costs from Cantor Fitzgerald Environmental Brokerage Services and the emissions rate for each unit. Many rehearing requests point out that the method of paying for exceeding emission allowances has been changed, so generators no longer can buy NOx emissions when they run out of emission allowances.

Instead, local air districts now require generators to pay mitigation fees when they exceed their emission allowances.

Several rehearing requests contend that the emissions cost should not be included as part of the proxy price, but should instead be collected in an uplift charge when actually incurred.[65] Several also argue that not all generators pay emission costs and those that do incur such costs pay them only when they have used up their emission allotments.[66] They contend, therefore, that emissions costs should not be included until they have to be paid. ARB maintains that mitigation fees are not variable costs and should not be included in the marginal cost calculation because it will increase prices to all customers. It also argues that including mitigation fees as part of marginal costs will result in increased pollution as air districts may decide to reduce the emissions fees as a result of the higher consumer costs for power.

Sellers, on the other hand, contend that emissions costs are legitimately included as marginal costs.[67] They maintain that in running beyond their allotment of emission costs today, they not only are required to pay mitigation fees, but their emission allotments in subsequent years are reduced.[68] Sellers claim they need reimbursement

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[65] Rehearing Requests by ISO, ARB, CEOB, CPUC, Assembly, PG&E, San Diego, SCAQMD, Edison, SCWC.

[66] Rehearing Requests by Assembly, PG&E, Edison, SCWC.

[67] Rehearing Request by Williams.

[68] Rehearing Requests by Dynegy, Mirant, Reliant.

for the opportunity costs of losing the ability to run their units in later years.

We will eliminate NOx costs from the calculation of the mitigated market clearing price. Since the Commission issued the April 26 Order, the SCAQMD's RTC program for electric generators larger than 50 MW (which was publicly traded by Cantor Fitzgerald Environmental Brokerage Services) has been eliminated by the SCAQMD's governing board and the rules governing generator run-times have been altered by the Governor of California.[69] There are 35 air quality districts within California and many of these districts treat NOx emissions differently from other air quality districts within California. Moreover, the ability of these districts and the state to change the rules governing NOx emissions renders a one size fits all approach for emission costs impractical.

However, mitigation fees associated with NOx emissions are a legitimate cost of producing energy. Therefore, generators should be permitted to recover the cost of these mitigation fees. We direct the ISO to develop a specific emission allowance administrative charge assessed against all in-state load served on the ISO's transmission system in order to recover NOx emission mitigation costs assessed against generators that are required to run in accordance with ISO dispatch instructions and the must offer provisions of this order. Monies collected through this administrative charge will be placed in an interest bearing escrow account by the ISO. When

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[69] *See* Executive Order D-40-01 by the Governor of the State of California.

a generator actually incurs mitigation costs, the generator will submit an invoice to the ISO for recovery of these costs and the ISO must pay these invoices. Because all customers within California benefit from cleaner air as a result of application of these mitigation fees, the administrative charge should be assessed against all in-state load served on the ISO's system. We direct the ISO to submit tariff modifications incorporating an emission allowance administrative charge within fifteen days of the date of the order.

c. O&M Adder

The April 26 Order added $2.00 to the marginal cost price for each generator to represent operations and maintenance (O&M) expense. MID and the Assembly claim the Commission has not justified the $2.00 adder for O&M expenses. MID maintains the Commission should permit generators to include actual O&M costs.

Variable O&M costs are legitimate marginal costs that are incurred as a result of the physical production of energy. Therefore, an adder to the marginal price of energy is appropriate in order for the generating unit to recover its variable O&M costs associated with each MWh produced and bid into the ISO's imbalance energy market. The Commission found in *San Diego Gas & Electric Company, et al.*, 94 F.E.R.C. ¶ 61,245 (March 9 Order), that a $2/MWh adder for variable O&M expense was reasonable. Furthermore, in the March 9 Order, we noted that the California Energy Commission also estimates variable O&M expenses of $2 to $3/MWh in a recent report titled "Market

Clearing Prices Under Alternative Resources Scenarios 2000 to 2010."[70]

We are cognizant of the concerns raised by MID that the O&M adder may be lower than actual O&M expenses; therefore, we will increase the O&M adder from $2/MWh to $6/MWh. The O&M forecasts made by the California Energy Commission are for new, efficient combined cycle units that are not the units on the margin in the California market. An O&M adder of $6/MWh is based upon a seventeen year average of actual non-fuel O&M expenses for oil and gas-fired steam plants.[71] The California market primarily consists of older oil and gas-fired steam plants. Thus, using a long-term average of actual O&M expenses for the same kind of units currently in the California market should permit generators in the California market full recovery of all non-fuel expenses.

d. Heat Rate

The April 26 Order provided that the heat rate should be based on operational heat rates and should not include start-up and minimum fuel load costs. This requirement was justified because the market clearing price should reflect the costs needed to operate at or near maximum output. Williams maintains that the bid for each generator should include minimum fuel and start-up costs. It also maintains the price should be calculated each hour

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[70] 94 F.E.R.C. at 61,863, n. 8.

[71] *See* http:/www.eia.doe.gov/oiaf/issues/opctbl3.html. Oil and Gas Steam Plant Operations and Maintenance Costs, 1981-1997.

based on the heat rate and NOx curves for the point at which the unit is dispatched.

On May 18, 2001, the ISO submitted a status report informing the Commission that the ISO had issued two market notices to market participants providing a format for submission of the requested heat and emissions data. The ISO requested heat and emission rates for eleven different operating points with the first and last operating points representing the unit's minimum and maximum operating level, respectively. As noted by the ISO, by collecting eleven different operating points, the ISO will be able to approximate the actual incremental cost curve of each generating unit and thereby develop representative proxy prices for each unit throughout the unit's operating range.

The ISO's proposal to include the minimum and maximum operating levels for each unit and nine points in between is reasonable. The ISO's heat rate curve reflects the minimum fuel load requirements requested by Williams. In addition, because the ISO will have the approximate heat rate curve for each unit, the ISO is directed to calculate the proxy market clearing price based upon the approximate point on the heat rate curve at which the last unit is dispatched. [72] However, we will allow sellers to recover their actual start-up fuel costs. Sellers will invoice the ISO their actual start-up fuel costs for recovery by the ISO in the same manner that emissions costs are recovered, and the ISO must pay

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[72] The emissions data is no longer relevant based upon our aforementioned removal of NOx costs from the proxy market clearing price.

these invoices. We direct the ISO to submit tariff modifications incorporating these costs within 15 days of the date of this order. This change adequately reflects the concerns raised by Williams, and, therefore, its rehearing request is moot.

e. Opportunity Cost, Scarcity Rents, Recovery of Fixed Costs, and Justification of Higher Prices

Generators maintain that the Commission's methodology for calculating marginal costs excludes legitimate opportunity costs related to energy-limited plants as well as scarcity rents.[73] They further maintain that paying only marginal cost of the last unit dispatched will not provide them with a reasonable opportunity to recover the fixed costs of peaking units. They further maintain that they will be unable to recover legitimate scarcity rents.

As discussed previously, the Commission is permitting generators to fully recover their emissions costs. As the Commission explained in the April 26 Order, in the real-time market, generators do not have opportunities to sell in higher-price markets because the real-time market consists only of energy that has not been previously sold in bilateral transactions. Since the Commission is imposing similar mitigation over the United States western markets in this order, sellers would no longer have any incentive to offer energy at a higher price to any other buyers in other states. Further, by using the marginal cost of the last unit dispatched to

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[73] Rehearing Requests by Avista, Duke Energy, Dynegy, Reliant, PPL.

establish the market clearing price during periods of reserve deficiency, the Commission is permitting all more efficient generators a fair opportunity to recover capital costs.

The generators maintain that, while the market clearing price will enable generators more efficient than the last generator dispatched to recover capital costs, it will not permit recovery of the capital costs for that generator. Sellers such as Avista, Duke Energy, Dynegy, Reliant, and PPL have a portfolio of generating capacity, with units that will be more efficient than the unit setting the market clearing price. Therefore, the amounts earned on the more efficient plants will cover the investment in the marginal plant. Furthermore, we note that California no longer relies exclusively on the spot market. Negotiated bilateral agreements have, in large part, replaced this market and provide opportunity for any seller to structure the arrangements necessary to recover its costs. Finally, under the FPA and our authorization for market-based rates, sellers are not guaranteed to recover all costs but are provided the opportunity to do so.

The Commission, in this order, has sought to provide prices that emulate closely those that would result in a competitive market and that provide generators with a reasonable opportunity to recover their costs. Sellers have not suggested a reasonable method of measuring the magnitude of such costs. The Commission's mitigation plan uses available data to develop a reasonable marginal cost for each generator and to permit reasonable recovery of legitimate costs. If sellers do not believe that these prices sufficiently cover their costs, they can file for

cost-of-service rates covering all of their generating units in the WSCC for the duration of the mitigation plan.

Reliant and PPL contend that generators are entitled to a premium to cover the real risk of non-payment in California. We recognize that the risk of nonpayment in California continues to be greater than that in the larger West-Wide market. We also note that there is a longer payment lag in the ISO spot markets of approximately 75 days that does not generally exist in the Western bilateral spot markets. We instruct the ISO to add 10 percent to the market clearing price paid to generators for all prospective sales in its markets to reflect credit uncertainty. [74] The adder is not instituted to compensate generators for past unpaid bills. The ISO must incorporate this provision in its compliance filing. This adder may be lifted by the Commission depending on the outcome of the settlement proceeding. However, the Commission believes that questionable business practices have sent negative signals to future supplies, credit rating agencies and investors and therefore an adder for credit risk is justified and necessary.

As described above, our order today prescribes a market-driven price mitigation mechanism in all hours. Sellers dissatisfied with these prices have two options. They may propose cost-based rates for their entire portfolio of generating facilities in the WSCC in a section 205 filing with cost support including a reasonable rate of return on investment that reflects

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[74] This adder will not be reflected in the market price for the rest of the WSCC.

the unique conditions in California. Alternatively, although we believe the mitigated price to be adequate, sellers can seek to justify each transaction above the mitigated price. Any such justifications, however, cannot include premiums to compensate for credit risk, since our market-clearing price for the ISO's markets already reflects an adder for this risk. Similarly, a seller's emission costs cannot be used to justify exceeding the market-clearing price because our order allows each seller to recover its emission costs directly from the ISO. Claims of opportunity costs will not be considered because energy that is available in real-time cannot be sold elsewhere. Also, as explained elsewhere, marketers will not be allowed to justify prices higher than the mitigated prices because they must be price takers. Finally, while our approach allows recovery of gas costs, we will consider justifications based on higher actual gas costs if conditions in natural gas markets change significantly (assuming, of course, that suppliers can document and support their gas purchasing portfolio and allocation among all generating units at the relevant time).[75]

3. Applicability to Marketers And Out-of-State Generators

A number of rehearing requests contend that generators can circumvent price mitigation by

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[75] Currently, emission costs outside of California are de minimis. However, we recognize that this may change, and that sellers could be subject to entirely new costs resulting from changes in circumstances. We will consider such costs on a case-by-case basis.

selling energy to marketers. [76] They argue the generator could sell energy to a marketer at a high price and then the marketer could bid a high price into the ISO market, which it justified on the basis of its acquisition cost. In order to ensure compliance with the price mitigation, the Commission will not permit marketers to bid a price higher than the market clearing price. This will still provide marketers with an opportunity to earn a reasonable return on purchased energy, since the mitigated price is established by the marginal costs of the last unit dispatched and this price will be above the costs of the generators from which the marketers obtain their portfolio of energy. In this case, the marketer is no different than the last generator dispatched; it can recover the marginal costs of the last unit of energy produced.

The ISO maintains that out-of-state generators should be covered by the mitigation requirement so that any bids they submit above the market clearing price will be subject to refund. Out-of-state generators that want to have their marginal costs included in calculating the market clearing price can submit the required heat rate and gas source to the ISO for use in calculating the market clearing price. In the April 26 Order, the Commission did not require out-of-state generators to justify their price if they bid into the ISO market, because the Commission did not want to discourage out-of-state generators from bidding into the ISO market. However, now that the Commission is implementing

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[76] Rehearing Requests by ISO, CEOB CMUA, Metropolitan, NCPA, SMUD, San Diego, Edison.

mitigation for the entire WSCC, out-of-state generators will be treated like in-state generators.

F. Conditions on Market-Based Rate Authority

The April 26 Order conditioned public utility sellers' market-based rates to ensure that they do not engage in certain anticompetitive behavior. Sellers violating these conditions would have their market-based rates subject to refund and possible revocation.

Several generators have requested rehearing of this aspect of the April 26 Order.[77] Mirant and Williams, for example, urge the Commission to realize that sellers save certain units for when they can get the best price. Mirant contends that the bidding practices proscribed by the April 26 Order are legitimate, justifiable strategies in a competitive market and requests the Commission to eliminate the conditions or at a minimum, to limit the imposition of the conditions to certain hours.

Dynegy opposes the prohibition on the first category of bids, so-called "hockey stick" bidding. Dynegy submits that the risk of outage goes up substantially as the unit is pressed into operating longer than is advisable. The generator, therefore, faces new risks, such as a forced outage, and must be able to place premiums on the price per unit. EPSA, meanwhile, opposes the prohibition on bids that rise as the unit's output drops. EPSA states that the Commission should not revoke market-based rate authority based on a legitimate effort to recover total

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[77] Rehearing Requests by Dynegy, Mirant, Reliant, EPSA, Duke, PPL.

costs, but rather only if it finds that market power has been abused.

We will not tolerate abuse of market power or anticompetitive bidding or behavior. Emblematic of these practices is the now well-publicized bid of $3,880/MWh by Duke Energy. This bid resulted in total revenues for Duke Energy of $11 million. Exacerbating the problem was the fact that, while this transaction was identified in the March 9 Order as exceeding the proxy price, Duke Energy failed to even report this transaction in its quarterly report. The March 9 Order gave Duke Energy the choice of refunding all revenues in excess of those that would have occurred using the proxy price, or justifying the higher bid. Duke Energy chose the latter. Duke Energy argued that the payments for the energy it had supplied were in arrears, and therefore, it added a credit premium. The data show that Duke Energy's risk premium exceeds its variable cost by an order of magnitude.[78] Duke Energy's bidding at multiples of its marginal costs in an attempt to recover past due amounts can in no way be found to be just and reasonable. Accordingly, Duke Energy is directed to refund with interest pursuant to 18 C.F.R. § 35.19a, or offset, down to the level of the proxy price, $273/MWh for January, during the relevant hours. As the proxy price is well above Duke Energy's

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[78] Duke Energy unequivocally states that it is using the $3,880/MWh bid as a negotiating tool to recover payment for prior transactions. Duke Energy states that it will settle for the proxy price if and when it is paid in full for its prior, unpaid transactions. March 23, 2001 compliance filing in Docket Nos. ER01-1448-003 and ER01-1448-004 at pp. 10-12

claimed running costs, it will be sufficient to cover any credit risk that Duke Energy may face.[79]

Public utility sellers' market based rate authority will be subject to potential revocation if they are found to have engaged in inappropriate behavior. Further, WSCC public utility sellers' market-based rate authorizations are hereby conditioned on agreeing to potential refunds for overcharges resulting from anticompetitive behavior.

The Commission denies Dynegy's request asking the Commission to clarify that the prohibition on bidding practices will expire on April 30, 2002, along with the rest of the April 26 Order.

G. Refunds

In the April 26 Order, the Commission established that all charges below the market clearing price would not be subject to refund. Refunds would be required only for sellers that fail to justify bids above the market clearing price. The Commission further stated that generators would not be liable for refunds if the Commission did not act within 60 days of the filing of the justification report.

PG&E and Edison maintain that the Commission cannot erase statutory refund obligations by stating that certain prices are deemed just and reasonable. Edison argues that the Commission must order

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[79] The Commission notes that there are a number of submittals dealing with sellers' market-based rate authorizations as well as bid justifications. We will address them in separate orders, if not resolved as part of the settlement process established elsewhere in this order.

refunds for all amounts above a just and reasonable rate and should not be able to limit refunds to emergency situations. Edison maintains that the Commission cannot establish that refund authority will expire within 60 days. It further contends that the Commission cannot shield generators from refunds, because the Commission has the authority to correct its legal errors. The CPUC maintains that refunds should exceed unlawful gains to act as a deterrent and suggests that the Commission impose treble damages, as provided for in antitrust law.

The Commission is establishing price mitigation in all hours of reserve deficiency and, as a discretionary matter, is also extending a form of that mitigation to hours of non-reserve deficiency. This price mitigation establishes the maximum just and reasonable rates in spot markets, absent cost justification. Moreover, the 60 day period for review of cost justifications was a self-imposed requirement to ensure that there is price certainty. The Commission has the authority to extend the period if necessary to finish processing the justifications.

With respect to the CPUC's arguments, the CPUC cites no provision of the FPA authorizing the Commission to impose penalties. Finally, the Commission has no authority to impose treble damages.

H. Underscheduling Penalty

On December 15, 2000, the Commission issued an order which established, among other things, as part of a comprehensive price mitigation plan, a maximum penalty of $100/MWh if energy buyers had over 5 percent of their load served in the real-

time market.[80] Several parties request that the Commission suspend the penalty for underscheduling in this proceeding.[81] Due to the Commission's decision in the April 26 Order to defer action on suspending the penalty for underscheduling, we will address this issue in a future order.

I. Confidentiality of Data

The Commission stated in the April 26 Order that it would continue the previous practice of keeping bid data confidential for six months, because disclosure of such information may lead to a reduction in competition because it will allow competitors to learn what their competitors are bidding and could lead to price collusion or coordination. The Commission also found that generator's heat rates and emission cost information was also confidential business information that should not be disclosed.

Several parties contend that the Commission should not keep the heat rate and other cost information used to justify bids confidential, but should make the data publicly available, under section 205 of the FPA, on a next-day basis.[82] They also assert that due process requires that all data used to determine the proxy price is an essential part of a rate schedule and must be made available

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[80] *San Diego Gas & Electric Company, et al.*, 93 F.E.R.C. ¶ 61,294 (2000), *reh'g pending.*

[81] *See* Comments by CPUC, DWR, PG&E.

[82] Rehearing Requests by NCPA, Assembly, SCWC, Edison, San Francisco, PG&E.

so it can be challenged by other parties, particularly ratepayers. SCWC and Assembly contend that the solution to collusion or gaming is not confidentiality, but rather regulation of seller conduct. As an alternative, San Francisco and Assembly maintain that the Commission can keep the data confidential, but that the filing of the data should be publicly noticed pursuant to the FPA, and the data should be available for review by those parties who enter into a protective order.

As the Commission found in the April 26 Order, the information on heat rates and emission costs is highly confidential business information. The disclosure of such information can cause competitive harm by allowing competitors to learn of the behavior and costs of their competitors. The Commission regulations provide for granting confidential treatment of business sensitive information. [83] These issues are raised in other pleadings before the Commission, and we will address these matters in a later order.

EPSA's concerns relate to the independence of the ISO Board and the apprehension of disclosing confidential data to a non-independent body. EPSA suggests replacing the ISO Board or alternatively, requiring the reporting of such data to an independent entity so it can perform the marginal cost calculations. The concerns related to the independence of the ISO Board are beyond the scope

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[83] *See* 18 C.F.R. §§ 388.112 (2000), 385.206(e), 385.213(c)(5), 385.410(c) (providing for confidential treatment for business sensitive information).

of this rehearing and will be addressed in a later order.

M-S-R and TANC state that the April 26 Order is silent with respect to ordering the ISO to keep the bid and cost data confidential. While the Commission finds that the order was sufficiently clear in the first instance, out of an abundance of caution, the Commission clarifies that the ISO is ordered to treat all cost data in a confidential manner.

J. Review and Duration of the Mitigation Plan

In the April 26 Order, the Commission established a maximum one-year time period for the duration of the mitigation plan. In addition, the Commission instituted a process for reviewing the operations of the plan and the conditions in the California market on a quarterly basis.

Several parties request rehearing on the duration of the mitigation plan, stating that the Commission's decision to establish a predetermined time period for applying mitigation is arbitrary and capricious.[84] Anaheim asserts that there is no rational basis for ending the mitigation after one year while SCWC states that the only criterion for terminating mitigation is whether markets are competitive or not. Metropolitan states that the Commission's assumptions about planned demand reduction and market development within one year should not be the basis for terminating mitigation. Metropolitan, Assembly, and others urge the Commission to

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[84] Rehearing Requests by Edison, CPUC, CMUA, Anaheim, SCWC, Metropolitan.

monitor the progress of market entry by new generation and other market developments before termination.

The Commission is requiring the ISO to file on or before March 26, 2002, a report on market conditions that addresses among other things: (1) a list of all new generating resources (including the nameplate capacity) that the State of California has announced this year would be on line by summer 2002 and which of those facilities actually are on line (see Attachment to this order);[85] and (2) the continued progress in executing long-term contracts and reducing the reliance on the spot market. We will extend the mitigation through September 30, 2002. Our requirement for quarterly reports will continue.

K. RTO Proposal

In the April 26 Order, the Commission conditioned the implementation of the market monitoring and mitigation plan on the ISO and the three investor-owned utilities (IOUs) (SDG&E, Edison, and PG&E) filing an RTO proposal by June 1, 2001, consistent with the characteristics and functions in Order No. 2000.

Several parties have requested rehearing challenging the Commission's conditioning mitigation on the filing of an RTO.[86] While

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[85] As pointed out in the April 26 Order, California has committed itself to increasing in-state generation and projects that new generation totaling 4,168 MW will be on line by the end of August 2001 and that there could be as much as 6,879 MW on line for the summer of 2002.

[86] Rehearing Requests by Seattle, Anaheim, SCWC, San Diego, CPUC, PG&E, CMUA, Metropolitan, CEOB.

requesting rehearing on the lawfulness of the condition, City of Seattle and others assert that filing an RTO proposal by June 1, 2001 is highly unrealistic, and therefore request that the RTO condition be removed from the April 26 Order on rehearing.

As noted in the April 26 Order, the RTO condition recognizes that the only real solution to supply problems that affect the Western United States is to create a regional response. The Commission intended to create such a response, and to improve and enhance supply and deliverability infrastructure so as to make the deliverability of supply possible and more reliable by imposing this condition as a necessary component to a solution for California and the Western United States. The ISO and two IOUs, SDG&E and Edison, filed an RTO proposal on June 1, 2001. PG&E also made a separate filing. Since the RTO filings have been made, the monitoring and mitigation plan will remain in effect. The Commission will address the adequacy of these filings in future orders. Since the ISO and utilities made the requisite filings, the requests for rehearing on this issue are moot.

L. West-Wide 206 Implementation

In the April 26 Order, the Commission instituted an investigation under section 206 of the FPA into the rates, terms and conditions of sales for resale of electric energy in interstate commerce in the WSCC other than sales through the ISO's markets, to the extent that such sales for resale involve: (1) electric energy sold in real-time spot markets (*i.e.*, up to 24 hours in advance) and (2) take place during

conditions when contingency reserves (as defined by the WSCC) for any control area fall below 7 percent. These proceedings were instituted to investigate whether and the extent to which significant increases in the prices for energy and ancillary services in the California market are affecting prices for such services in the WSCC outside of California.

In the April 26 Order, the Commission recognized that the California market is integrated with those of other states in the WSCC. Therefore, the Commission stated its intention that, to the extent possible, its proposed changes would mirror the measures to be applied to California markets.[87] The April 26 Order proposed the following three measures for the WSCC:

> (1) A requirement that all public and non-public utility sellers, with energy operationally and contractually available in real-time, offer that energy for sale;
>
> (2) Price mitigation during periods when reserves fall below 7 percent; and
>
> (3) A condition on the market based rate authority of public utility sellers selling in the WSCC region to ensure that they do not engage in anti-competitive behavior.

On April 27, 2001, the Commission issued a notice establishing a refund effective date 60 days from the date on which notice of initiation of the investigation was published in the Federal Register. The notice was published in the Federal Register, 66

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[87] 95 F.E.R.C. ¶ 61,115, at 61,356.

Fed. Reg. 22223, on May 3, 2001. Thus, the refund effective date is July 2, 2001.

1. WSCC Mitigation Plan Overview

Based upon the need for uniform pricing throughout the Western region, we now find it necessary to adopt a market monitoring and mitigation plan for the WSCC spot markets. This plan will consist of several primary elements, each of which is intended to closely mirror the monitoring and mitigation plan we have adopted for California while also taking into account the various disparities between the California and WSCC markets.

Effective on the day following the date of this order, the plan we adopt below applies in all hours to all spot market transactions throughout the WSCC. In the hours when California experiences reserve deficiencies, prices for WSCC spot market sales cannot exceed the ISO's hourly market clearing price, absent justification.

Under our current and revised mitigation plan, the price in the ISO's Imbalance Market during times of insufficient operating reserves will consistently reflect the marginal cost of energy. Recent data show that during hours of sufficient operating reserves, the average hourly Imbalance Energy price has been zero and at times a negative value. These prices indicate that either there were no transactions in this market or that generation actually exceeded load during these hours. While there may be a number of factors that contribute to these anomalous results (*e.g.* changes in buying strategies), we are convinced that we must use a

modified mitigation approach during hours of non-reserve deficiencies.

For spot market sales, both in the WSCC and in California, in all non-reserve deficiency hours (*i.e.*, when reserve levels in the ISO exceed 7%), we will adapt the use of these market clearing prices. Eighty-five percent (85%) of the highest ISO hourly market clearing price established during the hours when the last Stage 1 (not Stage 2 or 3) was in effect will, absent justification, serve as the maximum price for the subsequent period. For example, if the highest hourly market clearing price during a Stage 1 is $140/MWh, spot prices in all subsequent non-reserve deficiency hours beginning when Stage 1 is lifted can be no higher than $119/MWh (*i.e.* 85 percent of $140/MWh). Sellers through the ISO's single price auction will receive the hourly market clearing price, but that clearing price will not exceed $119/MWh. For example, if the market clears at $90/MWh all bidders in the ISO's auctions will receive $90/MWh for that hour. However, bids are limited to $119/MWh and, therefore, the clearing price during the period will never exceed $119/MWh. For sales outside the ISO's single price auctions (bilateral sales in California and the rest of the WSCC), sellers will receive the prices they negotiate up to the maximum price, in this example, up to $119/MWh. This maximum clearing price will remain in place until the next Stage 1 is declared and a new price is set. When that Stage 1 is lifted, 85% of the highest hourly market clearing price from that period will carry forward.

Third, the plan imposes a must-offer requirement for all hours upon sellers with the exception of

hydroelectric resources and capacity needed to meet WSCC minimum operating reserve criteria for control areas. Fourth, the plan applies to all public utilities (including marketers) and non-public utilities who sell into Commission-regulated spot markets or use the interstate transmission grid subject to our jurisdiction. Market-based rate authorizations for public utilities are hereby conditioned upon adherence to this plan.

2. Interventions and Comments

In the April 26 Order, the Commission provided that comments should be submitted within ten days of the date of that order. Timely notices of intervention, motions to intervene and comments in the WSCC proceeding were filed by the entities listed in Appendix B.

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, notices of intervention and timely, unopposed motions to intervene serve to make the intervenors listed in Appendix B parties to this proceeding. Given the early stage of the proceedings, we will accept the late-filed comments.

3. Megawatt Laundering

In the April 26 Order, the Commission noted that several commenters complained that generators may avoid the Commission's mitigation requirements through "megawatt laundering." In that order, the Commission recognized that the California market is integrated with other states and instituted the instant investigation. In addition, the Commission extended the must-offer obligation to include non-public utility generators in California which currently make use of the ISO's interstate

transmission grid. In their comments, CPUC, DWR, TURN/UCAN, and CEOB request that the Commission also address megawatt laundering in this proceeding.

As discussed above, megawatt laundering will no longer be a concern due to our revised mitigation plan. First, the mitigation plan will be for all hours and will be applicable uniformly throughout the WSCC. Second, both sales within and outside California will be treated uniformly including sales by marketers. As a result of these modifications, this strategy cannot be used to avoid potential mitigation.

4. The Proposed 7 Percent Reserve Deficiency Trigger

The April 26 Order established a mechanism for price mitigation for all sellers (excluding out-of-state generators) bidding into the ISO's real-time market during a reserve deficiency, and proposed that mitigation in the WSCC would be triggered when contingency reserves (as defined by the WSCC) for any control area fall below 7 percent.

Numerous commenters raise issues regarding how the reserve deficiency mechanism would be implemented for the WSCC. Based on the numerous concerns raised by the comments, we will simplify the West-wide mitigation so that it will trigger only when the ISO declares a reserve deficiency.

5. The Proposed Must-Offer Requirement

In the April 26 Order, the Commission included a requirement that all generators in California (with the exception of hydroelectric power), including non-

public utility generators that make sales through the ISO's markets or that use the ISO's interstate transmission grid, must offer any power that they have available in real time to the ISO. This includes power not already scheduled to run through bilateral agreements. [88] With respect to the WSCC investigation, the Commission stated that it intends to mirror the approach used in California.

A number of parties oppose the requirement for the WSCC. For example, the Oregon Office of Energy believes that a requirement to offer energy for sale is difficult to police because a generator must be allowed to decide when its equipment must be taken out of service and at what levels of output it can run.

We clarify that the must offer requirement throughout the WSCC will not apply to hydroelectric resources or to generation that is necessary for control area operators to meet the applicable WSCC Minimum Operating Reserve Criteria. We recognize that outside of California there is currently no operational ISO or RTO in place in the WSCC and therefore, no centralized location to post this information. The lack of an operational regional structure will make implementation of this feature of the mitigation plan difficult.

In order to implement this feature of the mitigation plan immediately, we will require all public utilities that are control area operators to have their wholesale merchant function calculate on a daily basis the amount of capacity that will be available after load and operating reserve forecasts

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[88] 95 F.E.R.C. ¶ 61,115, at 61,355-57.

have been calculated. The wholesale merchant function will post this information on its company web site and on the Western System Power Pool (WSPP) web site, and will maintain in its daily log the amount of non-hydro resources that will be available. Actual arrangements for energy sales from such resources should be made with the wholesale merchant function and not with the control area operator.

To implement this requirement, we will require each marketer and independent power producing entity to post available capacity on a daily basis on its own web site and the WSPP web site.

6. Applicability to Non-Public Utilities

The April 26 Order extended the must-offer requirement and the price mitigation plan to non-public utility generators in California which currently make use of the ISO's interstate transmission grid or sell in the ISO's markets. The Commission found that extending these requirements to non-public utilities is necessary to ensure that the mitigation and monitoring proposal is applied equally to all generators in California.[89] Similarly, the April 26 Order proposes to extend these requirements to non-public utility generators in the WSCC.[90]

Non-public utilities oppose applying these requirements to them. On the other hand, Avista Energy requests that the Commission suspend price mitigation measures established for public utilities

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[89] *Id.* at 61,356 .

[90] *Id.* at 61,365.

in the WSCC if the Commission does not extend the mitigation measures to non-public utility sellers.

For the same reasons the April 26 Order applied mitigation to all generators within California, we will extend the mitigation plan adopted herein to include all public and non-public utilities throughout the WSCC. Moreover, the percentage of non-public utility generation in the WSCC outside of California is significantly larger than that inside of California.[91] We believe that all entities must assist with solving the problems in the WSCC. Accordingly, the Commission will require that, as a condition of selling into the markets which are subject to this Commission's exclusive jurisdiction, and as a condition of using Commission jurisdictional interstate transmission facilities, all sellers located in the WSCC, including non-public utility sellers in the WSCC, must abide by the WSCC price mitigation plan and by the must-offer obligation (if applicable) described in this order.

While the Commission does not directly regulate the non-public utility sales for resale throughout the WSCC, we have the authority, and, indeed, the responsibility, to ensure that rates, terms and conditions for jurisdictional service are just and reasonable. However, the Commission cannot ensure such just and reasonable rates in the current circumstances in the WSCC unless all entities that sell energy in the relevant spot markets or use the interstate transmission grid subject to our jurisdiction abide by the same conditions. Finally, by

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[91] *See* Powerdat database, Resource Data International, Inc., April 2001 data set.

applying the plan discussed in this order to non-public utilities, we eliminate the incentive, and the means, for public utilities to avoid mitigation (*i.e.*, by making wholesale sales to non-public utilities for resale in the spot market).

7. Refund Issues

As noted above, the refund effective date established in this proceeding is July 2, 2001. Some parties contend that it is premature to establish a refund effective date for the WSCC, or that the prospect of refunds could cloud supplier decisionmaking, while others are concerned that if a transaction is executed in the day-ahead market prior to a declared reserve deficiency, the transaction should be honored without mitigation or refund obligation.[92]

We will not rescind the refund effective date because we are legally obligated to establish a refund effective date when an investigation is instituted under section 206 of the FPA. We have established the earliest possible refund effective date permitted by the FPA Section 206, to provide maximum protection to customers. We expect that sellers will observe the requirements of this order and that the need for refunds will be rare. The commenters have not justified providing less protection. Moreover, the mitigation plan is taking effect prior to the refund effective date and this should obviate the need for refunds.

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[92] *See* Comments of Avista Energy, Duke and Powerex.

8. Mitigation Beyond Summer 2001

Although we are confident of the efficacy of our West-wide mitigation plan throughout the Summer of 2001, we nonetheless wish to obtain comment for the purpose of revising the mitigation methodology for future periods, if necessary.[93] Accordingly, we invite interested parties to file with the Commission comments and proposals concerning: (1) any developments, either beneficial or adverse, which have occurred in the Western region spot markets as a result of this order; (2) any difficulties with implementation of the mitigation plan detailed in the order, and the relevant solutions thereto; and, most importantly (3) any alternative market mitigation approaches. In order to provide for timely review and analysis, we will require that parties' comments and proposals be submitted to the Commission within 60 days of the date of issuance of this order.

M. Settlement Conference

We will require that all public utility sellers and buyers in the ISO's markets participate in settlement discussions to complete the task of settling past accounts and structuring the new arrangements for California's energy future. To achieve this goal, it is imperative that the parties reach agreement on (1) the additional load that is to be moved from the spot market to longer-term contracts, (2) refund (offset) issues related to past periods, and (3) creditworthiness matters. In

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[93] In particular, we seek comments on whether our approach is appropriate given regional differences be-tween California and other regions.

highlighting these specific issues, we are not suggesting that the settlement discussions are limited to these matters, but emphasize that all issues that remain outstanding to resolve past accounts and ensure California's energy future are on the table for the parties to address. Finally, we stress that it will be critical to the success of these discussions that the State of California designate one or more representatives, authorized to act on behalf of all affected state interests, to participate fully in the settlement discussions. We will appoint the Chief Administrative Law Judge or his designee to serve as a settlement judge to assist the parties in reaching a settlement and require the judge to convene an initial settlement conference no later than June 25, 2001, and to complete the settlement discussions no later than 15 days after the commencement of the settlement conference. The settlement judge shall make a recommendation to the Commission within 7 days after the close of the settlement discussions if the issues are not resolved by the parties.

N. ISO Compliance Filing

In the April 26 Order, the Commission directed the ISO to submit a compliance filing no later than fifteen days from the date of that order. The ISO made its compliance filing in Docket Nos. EL00-95-034 and EL00-98-033 on May 11, 2001. Due to the significant modifications to the mitigation plan we are adopting today, we will require a new compliance filing within 15 days of the date of this order.

The Commission orders:

(A) The ISO shall submit tariff changes to comply with this order within 15 days of the date of this order.

(B) Sellers of energy in the WSCC are subject to the mitigation plan as discussed in the body of this order. The mitigation plan will become effective on the day following the date of this order.

(C) Rehearing is granted in part, and denied in part, as discussed in the body of this order.

(D) The requests for stays of the April 26 Order are denied as discussed in the body of the order.

(E) No later than 7 days after the completion of settlement discussions, the settlement judge shall make a recommendation to the Commission with respect to the settlement negotiations in the captioned dockets.

(F) Duke Energy must file a report quantifying refunds or offsets within 15 days of the date of this order, as discussed in the body of this order.

(G) Interested parties are hereby invited to file comments and proposals regarding the market mitigation plan, as discussed in the body of this order.

By the Commission.

(S E A L)

Commissioner Massey concurred in part with a separate statement attached.

Commissioner Breathitt concurred with a separate statement attached.

s/ Linwood A. Watson, Jr.

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix A
Requests for Rehearing of April 26 Order
(* - denotes request for late intervention)

Party	Abbreviation
American Public Power Association	APPA
Automated Power Exchange	APX
Avista Energy, Inc.	Avista Energy
California Air Resources Board *	ARB
California Department of Water Resources	DWR
California Electricity Oversight Board	CEOB
California Independent System Operator Corporation	ISO
California Municipal Utility Association	CMUA
California State Assembly	Assembly
Calpine Corporation	Calpine
Cities of Anaheim, et al.	Anaheim
City and County of San Francisco	San Francisco
City of Burbank *	Burbank
City of San Diego	San Diego
City of Seattle	Seattle
Cogeneration Association of California and Energy	

Producers and Users Coalition[94]	CAC/EPUC
Consumer Federation of America *	CFA
Duke Energy North America, et al., LLC	Duke Energy
Dynegy Power Marketing, Inc. et al.	Dynegy
Electric Power Supply Association	EPSA
Imperial Irrigation District *	IID
Los Angeles Department of Water and Power	LADWP
M-S-R Public Power Agency, et al.	M-S-R
Metropolitan Water District of Southern California	Metropolitan
Mirant America's Energy Marketing, LP, et al.	Mirant
Modesto Irrigation District	MID
National Rural Electric Cooperative Association *	NRECA
Northern California Power Agency	NCPA
Pacific Gas and Electric Company	PG&E
PPL EnergyPlus, LLC, et al.	PPL
Public Utilities Commission of State of California	CPUC
Reliant Energy Power Generation, Inc.	Reliant

[94] Request for stay.

Sacramento Municipal Utility District	SMUD
San Diego Gas & Electric Co.	SDG&E
South Coast Air Quality Management District *	SCAQMD
Southern California Edison Company	Edison
Southern California Water Company	SCWC
Transmission Agency of Northern California	TANC
Turlock Irrigation District *	TID
Williams Energy Marketing & Trading Company	Williams

Appendix B

WSCC Comments

(* - denotes Motions to Intervene)
(** - denotes Notice of Intervention)
(*** - denotes late filed comments)

Party	Abbreviation
AES Southland, Inc. ***	AES
American Public Power Association *	APPA
Attorney General of Washington *	Washington Attorney General
Automated Power Exchange	APX
Avista Energy, Inc.	Avista Energy
Avista Utilities	Avista Utilities
California Air Resources Board *	ARB

California Department of Water Resources *	DWR
California Electricity Oversight Board **	CEOB
California Independent System Operator Corporation	ISO
California Municipal Utility Association	CMUA
California State Assembly	Assembly
Cities of Anaheim, et al. *	Anaheim
County of San Diego *	San Diego
City and County of San Francisco *	San Francisco
City of Burbank *	Burbank
City of Seattle	Seattle
Cogeneration Association of California and Energy Producers and Users Coalition *	CAC/EPUC
Cogeneration Coalition of Washington *	CCW
Colorado Association of Municipal Utilities *	Colorado AMPS
Duke Energy North America, et al., LLC *	Duke Energy
Electric Power Supply Association	EPSA
Enron Power Marketing, Inc. and Coral Power, L.L.C.	Enron
Idaho Public Utilites Commission **	Idaho Commission
Imperial Irrigation District *	IID
Los Angeles Department of Water and Power ***	LADWP

M-S-R Public Power Agency, et al.	M-S-R
Metropolitan Water District of Southern California	Metropolitan
Mirant America's Energy Marketing, LP, et al. *	Mirant
Modesto Irrigation District *	MID
Morgan Stanley Capital Group Inc.	Morgan Stanely
National Rural Electric Cooperative Association *	NRECA
Nevada Attorney General's Bureau of Consumer Protection	Nevada BCP
Nevada Independent Energy Coalition *	NIEC
Nevada Public Utilities Commission *	Nevada Commission
Northern California Power Agency	NCPA
NRG Power Marketing Inc.	NRG
Official Committee of Unsecured Creditors of PG&E *	OSC
Oregon Office of Energy	Oregon Office of Energy
Pacific Gas and Electric Company *	PG&E
Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation and APS Energy Services, Inc.	Pinnacle West Companies
Portland General Electric Company	PGE

Powerex Corporation *	Powerex
PPL EnergyPlus, LLC, et al. *	PPL
Public Utilities Commission of State of California **	CPUC
Puget Sound Energy, Inc. *	Puget Sound
Reliant Energy Power Generation, Inc.	Reliant
Sacramento Municipal Utility District	SMUD
Salt River Project Agricultural Improvement and Power District *	SRP
San Diego Gas & Electric Co. * ***	SDG&E
South Coast Air Quality Management District *	SCAQMD
Southern California Edison Company *	Edison
Tri-State Generation and Transmission Association, Inc. *	Tri-State
Turlock Irrigation District *	Turlock
Utah Municipal Power Agency *	UMPA
Utility Reform Network and the Utility Consumers' Action Network	TURN/UCAN
Washington Utilities and Transportation Commission **	Washington Commission
Williams Energy Marketing & Trading	Williams Company
Wyoming Public Service Commission ***	Wyoming Commission

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

San Diego Gas & Electric Company Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	Docket No. EL00-95-031
Investigation of Practices of the California Independent System Operator and the California Power Exchange	Docket Nos. EL00-98-030 EL00-98-033
California Independent System Operator Corporation	Docket Nos. RT01-85-000 RT01-85-001
Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council	Docket Nos. EL01-68-000 EL01-68-001

(Issued June 19, 2001)

MASSEY, Commissioner, *concurring in part*:

Today's order brings expanded price restraints mitigation to a broken market. I support the order because it adopts measures that I have been championing for the past eight months. Price controls are now extended to the entire western interconnection, thereby eliminating the "megawatt laundering" problem that has vexed the mitigation programs adopted by the Commission and the ISO over the past year. Cost-based price constraints are now extended to all hours, not just those of reserve deficiency. We have long needed 24 x 7 coverage, and now we finally have it. The price caps will remain in place until September 2002, giving the market two full summers to correct. I endorse these measures.

While better late than never, I wish this Commission had taken effective action sooner. Until today, the Commission had stubbornly refused to implement full time price constraints, despite rather clear evidence that prices were not just and reasonable. We could have prevented much of the economic carnage in the western interconnection that has occurred over the past year.

Given that the Commission today adopts measures that I have long advocated, I am tempted to declare victory and let it be. But I cannot. There are some aspects of the order that I have reservations about, and for these reasons I concur with the order. One aspect is the addition of a 10 percent surcharge to the market clearing price to reflect credit uncertainty. I do not see the need for this. The Commission has issued orders in the past few months instructing the ISO to abide by the creditworthiness requirements of its tariff. I am concerned that the adder may diminish the ISO's

enforcement of those requirements. Moreover, it is my understanding that recently all sales into the ISO's markets have been backed by a creditworthy party. Instituting this surcharge does have a modest bright side, however. Generators may no longer attempt to justify bids on the basis of credit risk above what is provided for in the cost based clearing pricing methodology. This was a major flaw of the old ineffective $150 benchmark in our earlier mitigation program. Eliminating that ground for high prices is a positive development.

Second, the order should have provided guidance to the parties that will participate in the settlement conference we order. I believe we are avoiding our responsibility under the Federal Power Act to set just and reasonable prices by requiring parties to settle a multitude of issues with a price tag in the billions of dollars without at least two cents worth of guidance.

And finally, I do not agree with the rhetoric in this order that characterizes cost of service pricing as irrelevant, and perhaps even downright harmful, on the theory that it would discourage new supply. I do not understand the need nor the logic of this language. We have made a choice in this order to strike a balance between strict cost of service regulation and blind reliance on the market. The mitigation program puts in place important cost based price caps while relying on market based pricing. The order sets out reasons for this balanced choice, and articulating them is all that is needed to support our decision. I strongly disagree with the statement in the order that "a cost-based inquiry alone would not be sufficient in these circumstances

to fulfill the statutory duty" under the Federal Power Act. I do not read the Federal Power Act, and the relevant court decisions, so restrictively. There is still an important role for cost of service regulation where markets are not adequate.

What is curious about this aspect of the order is that the concern is to avoid discouraging new supply. However, as the well respected economist Alfred Kahn recently said of our long reliance on cost of service regulation, "(i)f the literature agrees on anything about that experience, it is that cost-based regulation, as traditionally practiced, has encouraged the goldplating of service and the very excess capacity that seemed to promise such enormous benefits to consumers during the past decade if rates were deregulated."[1] Dr. Kahn believes that cost of service may lead to too much supply. Thus, I do not understand the majority's logic concerning cost-based regulation and supply adequacy.

These concerns notwithstanding, I support today's order and the price protection plan it puts in place. To ensure that this price protection plan is successful, the Commission must exercise all of its statutory powers to keep natural gas prices in the West at just and reasonable levels. It is probably generally true that the marginal plant dispatched in California is fired by natural gas and uses a lot of it. Thus, the success of the plan we adopt today in lowering prices depends in large part on fluctuations

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[1] Statement of Alfred E. Kahn before the Committee on Governmental Affairs, United States Senate, June 13, 2001 at page 3.

in the price of natural gas. The Commission continues to have work to do in ensuring just and reasonable gas prices.

Today's price protection plan gives California and the West breathing room while their electricity markets are brought back to health. A number of items need to be addressed in the next 15 months for the recuperation to be successful. Clearly, there must be substantial amounts of new generation capacity brought on line. A more balanced supply portfolio must be developed as California moves away from an over reliance on the spot markets. A robust demand response program must be implemented through demand bidding and accurate price signals. Transmission constraints must be relieved in some way. And finally, the California ISO should explore a number of market reforms, such as the adoption of security constrained unit commitment dispatch, the creation of an installed capacity market and reserve requirements, and a single integrated day-ahead market. Without these measures, I would be concerned about whether the markets in the West can be brought back to health.

For these reasons, I concur with today's order.

s/ William L. Massey

William L. Massey
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

San Diego Gas & Electric Company Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.	Docket No. EL00-95-031
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California Independent System Operator Corporation	Docket Nos. RT01-85-000 RT01-85-001
Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council	Docket Nos. EL01-68-000 EL01-68-001

(Issued June 19, 2001)

Breathitt, Commissioner, *concurring*:

I concur with the result of today's order, and write separately to highlight one aspect of it. I am concerned about the imposition of a ten percent surcharge on the market clearing price paid to generators to reflect credit uncertainty in California. I have two primary concerns. First, the imposition of such a credit surcharge seems to concede to the California Independent System Operator (ISO) the issue of whether or not the ISO must implement the Commission's creditworthiness standards. We have directed the ISO to ensure the presence of a creditworthy counterparty for certain transactions.[1] I am not ready to concede this issue and, therefore, I call upon the ISO immediately to implement our orders regarding creditworthiness.

Second, I believe the imposition of such a credit surcharge may be premature. In today's order we also initiate settlement discussions among all public utility sellers and buyers in the ISO markets. Among the issues we direct the par-ties to consider in their negotiations are "creditworthiness matters." I am concerned that the credit surcharge could adversely affect the settlement discussions on the issue of prospective credit uncertainty.

Otherwise, I agree with my colleagues that creditworthiness and non-payment of accounts are serious problems in California. I believe the Commission and the ISO must take immediate steps to address these problems. I just hope this surcharge

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[1] *California Independent System Operator Corporation, et al.*, 95 F.E.R.C. ¶ 61,026, at 61,081 (2001)

does not prove to be an inappropriate remedy for this problem. Therefore, I respectfully concur.

s/ Linda K. Breathitt

Linda K. Breathitt
Commissioner